
A COMPLETE
SYSTEM OF PLEADING.

VOL. V.

A COMPLETE
SYSTEM OF PLEADING;

COMPREHENDING THE MOST

APPROVED PRECEDENTS and FORMS of PRACTICE;

CONSISTING OF

SUCH AS HAVE NEVER BEFORE BEEN PRINTED;

WITH AN

INDEX to the PRINCIPAL WORK,

INCORPORATING AND MAKING IT A CONTINUATION OF

TOWNSHEND's and CORNWALL's TABLES,
TO THE PRESENT TIME;

AS WELL AS AN

INDEX of REFERENCE to all the ANCIENT and
MODERN ENTRIES extant.

By JOHN WENTWORTH, Esq,
OF THE INNER TEMPLE, BARRISTER AT LAW,

*Ne quæ Studio disposita fidei
Intellecta priusquam sint contempta relinquat.* LUCRET,

V O L. V.
CONTAINING
COVENANT.—DEBT.

L O N D O N :

Printed for G. G. and J. ROBINSON, PATERNOSTER-ROW.

1791.

THIS Volume contains Declarations, &c. &c. in the Action of *Covenant*, and the remainder of the Declarations, and the Pleas, Replications, &c. in *Covenant*, together with a complete Index to that Head. It may be observed, that in most instances I have followed the Declarations with their *respective* Pleas, &c. and remaining pleadings even to Final Judgment, sometimes to proceedings in Error. This I chose for the ease and readier comprehension of the pupil and practitioner, instead of contenting myself with making a separate head of Pleas, and referring to them by the Analysis and Index. The latter will more readily answer the purpose of the busy pleader, who can easily make himself master of the arrangement, and momentarily turn to the plea (as indeed may the Student, who is so industrious as to pay the smallest attention to the Index); but the former, by keeping together all the pleadings, will mightily assist the novice (I speak from my own experience), and I do not recollect that there is a single precedent or plea where any doubt can arise but by some reference at the bottom of the page, or by referring to the Index, will be made clear. With this view, in the Declarations in this action I have been solicitous to point out, at the top of the page, the parties *by* whom and *against* whom the action is brought in the pleas, whether they follow the declaration or not—the *sort* of plea, as Replication, &c. and the *nature* of the plea, as in *discharge*, *performance*, &c.; so in the Index I have been careful for the easier comprehension of the pupil, to divide pleas, first, as they follow their respective declarations,

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secondly,

secondly, as the subject of Analysis. Unless I had so done, I foresaw the Pleadings would have wanted much of that *practical* order (if I may so express it) which the Analysis and Index alone would not have pointed out to the early practitioner. It will be likewise necessary to observe the similitude between the precedents under this head, as Covenant by and against *Apprentices* is either by Articles of Agreement or Indentures—so of *Leases*; therefore in referring to the Pleas to Declarations under these heads, the Reader may turn to either or both, and no possible difficulty can arise, especially those Pleas, first, by Lessee to Declarations by Lessor, and second, by the Lessor to Declarations by Lessee under the numbers 15 and 16 in the Index, or under Pleas to Declarations on *Articles of Agreement*, or *Indentures*, or *Leases*.

THIS Volume contains also part of the old Action of DEBT, which in ancient times was almost the only action brought on *Contract*, and still is perhaps the most important head in pleading and in use. It will be found to be divided into Debt; first, on Simple Contracts, such as from page 145 to 277; second, on Specialties, as on Articles of Agreement sealed, Bills penel, Bonds, &c. with part of which this Volume ends; third, on Records, fourth, on Penal Statutes, and the PLEAS in their order that do not follow any declaration or part of pleading in the manner I have above pointed out, and such as do follow, will be so indexed as to enable the Reader to have ready recourse to them. *e. g.* in Debt, Pleas to Debt on SIMPLE CONTRACTS, Bye Laws, Escapes, &c. Pleas to Debt on SPECIALTIES, Articles of Agreement, Award, &c. Bond, &c. may either be found following their respective Declarations, or under the distinct head
of

of Pleas classed in the same order, and the whole exhibited in one view by the Analysis and Index : this will make the seventh Volume.

THE Student will take notice both in *Covenant* and *Debt* that I have sometimes taken the liberty to give single precedent out of its order as in *Covenant*, p. 98. a Declaration by a Mortgagee, and in *Debt* on Byo-Law, p. 174. the Plea, Replication, &c. and after p. 188 ; the declaration, in these instances I have been only provided with the Pleas, &c. at the time of sending the copy to the press, and have *afterwards* been favoured with the Declaration, &c. and they are purposely inserted, with references, though out of their strict order, for the convenience of the practitioner, as in the third Volume, where a few instances occur of the same sort.

THREE precedents, which ought not to have been inserted in this Volume under *Debt*, have, through my own inadvertence in the preparing, or in the mislaying the copy, too late for me to alter, namely, in *Tort* against Sheriff for an Escape, p. 233. *Covenant*, p. 280. *Assumpsit*, 293. These I have taken care to apprise the Student of by a note at the end of each of them; and the first will be found indexed under its proper head *Tort* ; but I advise the pupil, in framing his Index to the Pleadings he may collect, to enter them under their proper heads as they happen irregularly throughout, for I cannot promise they may not, from the mass of matter I am obliged to prepare. I can speak with safety to their accuracy, as I think I may of all the others, from the knowledge I have of the Gentlemen who have drawn them, of which I have satisfied myself hitherto before I have ventured to publish any.

BUT

BUT it is really painful to me to be obliged to advertise the pupil of the gross errors in the press after *my final correction* both in the *former part* of the first Volume, and *throughout* this ; which, on account of their number, I have added in *Errata* and *Addenda* to this Volume. The second, third, and fourth Volume are comparatively free, or I had intended as I mentioned in the prefatory (or practical) directions to the second Volume, to have given the *Errata* and *Addenda* to each Volume. I can positively assure the Profession, from the care I have taken, it is unavoidable, for after actual correction of *one* word for *another* (for instance, as in the first Volume Assumpsit on Bills of Exchange, the words bills *returned* for *retained* by some mistake or overlooking in the final correction) they have kept the *latter* word, although corrected throughout a whole sheet instead of the *former*; and, in the present Volume, p. 253. and 355. the top line, the word *residence* for *reference*, although before in pages 341. and 345. they have the same word *reference* occurring, and in the *same* sheet ; so, p. 149. *Assignment* for *agistment* of Cattle, in Debt on Simple Contracts : These errors not only deface the book of a Lawyer, but may *mislead* the Student, *for which last reason* I am anxious, however, as in the former Volumes, so in this, the Student will have occasion to remark, that with a very few trifling exceptions which will be given under the head of *Errata* at the end of the Work, the errors of the press are all in the margin or notes, and not in the body of the precedent itself ; and upon the whole, after comparing five Volumes, I find fewer errors than in most works of the same extent.

J. WENTWORTH.

Inner Temple,
September 1797.



COVENANT.

(EXECUTORS OF) LESSOR *v.* (LESSEE OF) LESSEE

B. R. Trinity Term, 5. Geo. III.

ESSEX, *ff.* John Pope, executor of the last will and testament of Ann Farmer, deceased, complains of J. Bentham, esquire, being, &c. of a plea of breach of covenant; for that whereas by a certain indenture made the day of A.D. at, &c. in the said county of E. between the said A. F. in her lifetime, of the one part, and the said J. B. of the other part, (one part, &c.) *proferet in curia* [then recite the indenture to the end of covenant for payment of rent], as by the said indenture (reference being thereto had) will amongst other things more fully and at large appear; by virtue of which said demise he the said defendant afterwards, to wit, on the said tenth day of February 1763, at, &c. aforesaid, entered into all and singular the said demised premises, with the appurtenances, and was possessed thereof, that is to say, for and during the term of the natural life of the said A. F. and the said defendant being so possessed, and the said A. F. the testator, being so thereof seised, she the said A. F. afterwards, to wit, on the fourth of April 1775, died, being just before and at the time of her death so seised of such her estate of and in the said demised premises, with the appurtenances: And the said plaintiff, executor as aforesaid, in fact saith, that although the said A. F. the testator, always from the time of the making of the said indenture until the day of her death well and truly performed and fulfilled all things contained in the said indenture on her part and behalf to be performed and fulfilled, according to the tenor, true intent and meaning of the said indenture, to wit, at, &c. aforesaid; yet protesting that the said defendant hath not performed or fulfilled any thing in the said indenture contained on his part and behalf to be performed and fulfilled, he the said plaintiff in fact saith, that pounds of the said yearly rent of pounds for one year and the half of another year of the term aforesaid, ending at the feast of the Annunciation of the Bleis'd Virgin Mary, in the year 1775, at that feast in the year last aforesaid, became due and owing from the said defendant to the said A. F. the testator in her lifetime, and the said rent still remains and is wholly due, in

Declaration in covenant at suit of the executors of the lessor, tenant in fee, against the lessee of lease for life, for non-payment of rent accrued in the lifetime of the lessor.

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arrear, and unpaid, contrary to the form and effect of said indenture, and of the covenant of him said defendant in that behalf made as aforesaid, to wit, at C. aforesaid; and so said plaintiff, executor as aforesaid saith, that said defendant (although often requested by said A. F. in her lifetime, and by him said plaintiff, as executor as aforesaid, since her death), hath not kept his said covenant so by him made with said A. F. in her lifetime as aforesaid, but hath broken the same, and to keep the same with the said A. F. in her lifetime, or with said plaintiff, executor as aforesaid, since her death, hath hitherto wholly refused, and still refuses to keep the same with said plaintiff, executor as aforesaid, to the damage of the said plaintiff, as such executor as aforesaid, of sixty pounds, for which he brings his suit, &c.; and he also brings into court here the letters testamentary of said A. F. which sufficiently testify to the court here that the said plaintiff is the executor of the last will and testament of said A. F. and hath administration thereof, &c.

J. MORGAN.

Part of let-
testamen-

Trinity Term. 33. Geo. III.

SMITH, ASSIGNEE, &c.

against

SURRY, to wit. James

Jannaway, late of Send, in the

JANNAWAY, EXECUTOR, &c. } county of Surry, gentleman, executor of the last will and testament of William Harris, was summoned to answer William Smith, assignee of a certain messuage or tenement, and lands, which were of one John Tice deceased, in a plea that he the said J. T. keep with the said W. S. the assignee as aforesaid, the covenants made between the said W. H. for himself and his executors, and the said J. T. deceased, and his assigns, according to the force, tenor, and effect of a certain indenture thereof made between them; and whereupon the said W. S. assignee as aforesaid, by J. J. his attorney, complains, for that whereas the said J. T. deceased, before and at the time of making the indenture of lease hereafter next mentioned, was seised in his demesne as of fee of and in the several freehold closes or parcels of land hereinafter mentioned to be demised, with the appurtenances; and whereas before and at the time of making the surrender, license, and indenture of lease hereinafter mentioned, the right honourable Richard lord Onslow was seised in his demesne as of fee of and in the manor of Ripley and Send, with the appurtenances, in the county of Surry, whereas the copyhold messuage or tenement, with the several closes and parcels of lands and premises, with the appurtenances in the said surrender, license, and indenture of lease contained and hereinafter mentioned, then were and still are, and from time immemorial have been parcel; and the said Richard lord Onslow being so seised of the said manor, with the appurtenances, he the John Tice in his lifetime, and before and at the time of the making of the surrender, license, and indenture of lease hereafter next mentioned, was seised of the said copyhold messuage or tenement, closes, or parcels of land and pre-

mises,

Declaration in
Covenant in C. B.
Assignee of les-
see of copyhold
freehold pre-
mises, against
executor of les-
see, to the use
of his will, for
yielding up
repair, &c.
Breaches,

AGAINST (EXECUTOR of) LESSEÉ.

mises, with the appurtenances, in his demesne as of fee at the will of the lord, according to the custom of the said manor, and being so seised, at a court baron of the said right honourable Richard lord Onslow, the said then lord of the said manor, held for the said manor, on Friday the tenth day of January, in the tenth year of the reign of our sovereign lord George the third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. and in the year of Our Lord 1770, to wit, at Send, in the county of Surry, before John Chandler, gentleman, then steward of the said manor, he the said J. T. deceased, in his lifetime being present there in the said court in his proper person, did surrender by the rod into the hands of the said lord of the manor, by the acceptance of the said steward, according to the custom of the said manor, all and every his copyhold messuages, lands, tenements, and hereditaments, with their and every of their appurtenances, within and holden of the said manor, to the use and behoof of such person or persons, and for such estate and estates therein, as he the said J. T. deceased, should in and by his last will and testament in writing, or any writing purporting so to be, give, devise, limit, and appoint the same; and the said W. S. assignee as aforesaid, in fact further saith, that the said J. T. being so seised as aforesaid in the respective lifetimes of the said J. T. and W. H. and before the making of the indenture of lease hereafter mentioned, to wit, on the twenty-seventh day of March, in the year of Our Lord 1771, at S. aforesaid, the said Richard lord Onslow, lord of the said manor, by John Chandler, gentleman, then and there his steward of the said manor, did grant license to the said J. T. deceased, as a customary tenant of the said manor, to demise and let all and every his customary or copyhold messuages or tenements, lands, and hereditaments, within and holden of the said manor, for any term or number of years, not exceeding twenty-one years, from the twenty-ninth day of September then last past; and the said W. S. further says, that such license being so granted of the said copyhold premises as aforesaid, and the said J. T. deceased, being so seised as aforesaid heretofore in the lifetimes of the said J. T. and W. H. to wit, on the twelfth day of August, in the year of Our Lord 1771, by a certain indenture of lease, sealed with the seal of the said W. H. he the said W. S. now brings here into court, the date whereof is the day and year last aforesaid, the said J. T. for and in consideration of the yearly rents, covenants, and agreements in the said indenture contained on the part and behalf of the said W. H. his executors, administrators, and assigns, to be kept, done, and performed, demised, leased, and to farm let unto the said W. H. all that copyhold messuage or tenement and lands called Felhill, situate, lying, and being in S. aforesaid, and held in the manor of Ripley and Send, containing by estimation thirty acres, were the same more or less, and also all those three copyhold closes of land, called Angel-hill, lying in S. aforesaid, and held of the said manor, containing by estimation forty-two acres, were the same more or

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less, and also of all those three copyhold closes of land called Wilcrofts, lying in S. aforesaid, and held of the said manor, containing by estimation nine acres, were the same more or less, and also all those three freehold closes or parcels of land in S. aforesaid, called Wilcrofts, containing by estimation nine acres, were the same more or less, and also all that freehold close of land called Walletts, containing by estimation two acres, were the same more or less, and also all those two freehold closes of land called Ripsden, containing by estimation six acres, were the same more or less, and also all those five acres of meadow in Broadmead, and which said copyhold and freehold premises then were in the occupation of the said W. H. and all commons, ways, waters, easements, profit, commodities, advantages, and appurtenances whatsoever to the same belonging, or in anywise appertaining, except, and always reserved out of that demise and lease unto the said J. T. his heirs, and assigns, all and all manner of timber, timber trees, and all trees likely to be timber, then growing or being, and which at any time during that demise should grow, or be in or upon the said demised premises, or any part thereof, together with free liberty of ingress, egress, and regress, full power and authority to and for the said J. T. his heirs and assigns, and his and their labourers, servants, and workmen, with horses, cattle, carts, and carriages, working tools, and implements, to come, go, and return from time to time, or at any time or times during that demise, unto, from, and upon the said demised premises, or any part or parcel thereof, there to view, fell, cut down, hew, saw, convert, and carry away the same at his and their free will and pleasure, doing as little damage, hurt, or spoil as possibly could be, and he the said J. T. his heirs, and assigns, allowing unto the said W. H. his executors, administrators, and assigns, fourpence for every tree that should be cut down for sale, to hold the said demised premises to the said W. H. his executors, administrators, and assigns, from the twenty-ninth day of September then last past, for and during and until the full end and term of twenty-one years from thence next ensuing, and fully to be complete and ended, at and under a certain yearly rent therein mentioned and reserved; and the said W. H. did, by the said indenture, for himself, his heirs, executors, administrators, and assigns, amongst other things, covenant, promise, and agree to and with the said J. T. his heirs, and assigns, in manner following, that is to say, that he the said W. H. his executors, administrators, and assigns, some or one of them, should and would at his and their own costs and charges, from time to time, and at all times during that demise well and sufficiently repair, uphold, amend, maintain, and keep in good and sufficient repair the said messuage or tenement, and the barns, stables, stalls, outhouses, buildings, walls, posts, pales, rails, gates, stiles, bridges, sluices, hedges, banks, ditches, fences, and inclosures, being part of or belonging to the said thereby demised premises (he the said W. H. his executors, administrators, and assigns, being allowed rough timber on the stem for the doing thereof),

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thereof), and the same in good and sufficient repair should and would, at the end, expiration, or other sooner determination of that said demise, peaceably and quietly leave and yield up into the hands and possession of the said J. T. his heirs or assigns (except as therein is excepted); and also that the said W. H. his executors, administrators or assigns, should not nor would, during the said demise, lop, poll, strip, bough, or cut any of the oaks, ashes, elms, fellows or small trees then standing, growing, or being, or which at any time during the said demise should be standing, growing, or being in or upon the said demised premises, or any part thereof, other then lop, cut, or strip such pollard and other trees as have been usually lopped, cut, or stripped, and then no farther or higher than they have usually been lopped, cut, or stripped, but should and would nurture up and preserve the same, together with all such fellows and saplings, to and for the use and benefit of the said J. T. his heirs and assigns, and that he the said W. H. his executors, administrators or assigns, should not nor would at any time or times during the said demise, sell, carry, or remove, or cause to be sold, carried, or removed from off the said thereby demised premises, any of the straw, hulk, or fodder (except hay) which during that said demise should grow, arise, or increase upon or from the said demised premises, or any part thereof, but should and would, in or upon the said premises, or any part thereof, convert and make the same into dung, soil, and compost, and such dung, soil, and compost should and would, in a good husbandlike manner, carry out, lay, spread, spend, and bestow in and upon the said demised premises, or some part thereof, for the better manuring the same, except such dung, soil, and compost as should arise and be made in the last year of the said demise, and which should not be proper to be carried out and laid on the said demised premises, and the dung, soil, and compost arising from the last year's crop, which said excepted dung, soil, and compost, he the said W. H. his executors, administrators and assigns, should and would, at the end of the said demise, leave in a hill or some convenient part of the said demised premises, to and for the use and benefit of the said J. T. his heirs and assigns, without any payment or satisfaction whatsoever to be had, made, or given for or on account thereof; and that the said W. H. his executors, administrators or assigns, should and would from time to time, and at all times during the said demise, when and as often as he should cut any of the underwoods or hedges, part of the said demised premises, in a substantial and husbandlike manner, make the hedges or fences where the said hedges or underwoods stood, or next adjoining thereto, as by the said indenture of lease (reference being thereto had) may amongst other things more fully appear: by virtue of which said licence and demise, the said W. H. afterwards, and in the lifetime of the said J. T. to wit, on the day and year last aforesaid, entered into the said demised copyhold premises, with the appurtenances, and was possessed thereof for the said term so to him thereof demised as

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aforesaid, and by virtue of the said indenture of lease, he the said W. H. also then and there entered into the said freehold closes, with the appurtenances, and was possessed thereof for the said term so to him thereof granted as aforesaid, the reversion of the said several premises, with the appurtenances, belonging to the said J. T. deceased, and his assigns as aforesaid: And the said W. S. further says, that the said J. T. so being seised of the said reversion of the said several premises afterwards and before the making of the said surrender, to wit, on the twenty-eighth day of July, in the year of Our Lord 1778, at S. aforesaid, in the county aforesaid, made his last will and testament in writing, by him duly executed and attested to pass real estates, and thereby (amongst other premises) gave and devised the said reversion of the said several premises so before the making of the said will surrendered to the use aforesaid, and also the said freehold closes and premises to the said W. S. his heirs and assigns for ever; and afterwards, to wit, on the thirtieth day of August, in the year of Our Lord 1780, at S. aforesaid, in the county aforesaid, he the said J. T. died without revoking or altering his said last will and testament, and so seised of the said reversion of and in the said several copyhold and freehold premises as aforesaid: And the said W. S. further says, that afterwards to wit, on the twentieth day of August, in the year of Our Lord 1781, at the court baron of the right honourable George Lord Onslow and Cranley, the then lord of the manor of R. and S. aforesaid, then held for the said manor, to wit, at S. aforesaid, in the county aforesaid, before the said J. C. gentleman, steward there, the said W. S. was in due form admitted tenant of the reversion of the said several copyhold premises, according to the custom of the said manor, in pursuance of the said last will and testament of the said J. T. deceased, by virtue of which said last mentioned demise and admission, the said W. S. as devisee of the said J. T. became and was, and still is seised in his demesne as of fee of and in the said reversion of the said freehold premises, and also of the said copyhold premises at the will of the lord, according to the custom of the said manor: And the said W. S. further says, that although the said J. T. in his lifetime, and the said W. S. since the decease of the said J. T. always from the commencement of the said lease hitherto respectively performed, fulfilled, and kept every thing in the said indenture of lease contained on the part and behalf of the lessor to be done, performed, fulfilled, and kept; yet protesting that the said W. H. deceased, in his lifetime, nor his executors or assigns, after his decease, did not, nor did any or either of them perform and fulfil any thing in the said indenture contained on the part and behalf of the lessee and his assigns to be done and performed; In fact the said W. S. says, that although the said J. T. deceased, in his lifetime, and the said W. S. since his decease, were always ready and willing, during the said term to demise as aforesaid, to allow sufficient and necessary rough timber in the stem on the said demised premises, for the doing of the repairs

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pairs of the said demised premises, and although the said W. H. and his assigns, from the commencement of the said term till the expiration thereof (which happened on the twenty-ninth day of September, in the year of Our Lord 1791), held and enjoyed the said demised premises, with the appurtenances, under and by virtue of the said demise, when the same were duly surrendered and delivered up to the said W. S. assignee as aforesaid of the said reversion thereof, to wit, at S. aforesaid, in the county aforesaid: Yet the said W. S. in fact says, that the said messuage, tenement, barns, stables, out-houses, walls, posts, pales, gates, stiles, bridges, sluices, hedges, banks, ditches, fences, and inclosures of and belonging to the said demised premises at the said end, expiration, and determination of the said term of thereof demised as aforesaid, were not, nor were any of them left and yielded up in good and sufficient repair to the said W. S. assignee as aforesaid, according to the tenor and effect, true intent and meaning of the said indenture, and of the covenant of the said W. H. for himself and his executors in that behalf made as aforesaid with the said J. T. and his assigns, but on the contrary thereof the said W. S. says, that the said demised premises, during the continuance of the said term, and after the said W. S. became so seised of the said reversion, that is to say, on the first day of January, in the year of Our Lord 1791, and from thence until and at the expiration of the said term so thereof demised as aforesaid, were suffered and permitted to be ruinous, out of repair, and in great decay, for want of needful and necessary repairs in the said messuage or tenement; and the barns, stables, stalls, out houses, buildings, walls, posts, pales, gates, stiles, bridges, sluices, hedges, banks, ditches, fences, and inclosures of and belonging to the same in the said indenture mentioned, and thereby demised as aforesaid, and at the determination of the said term were left and quitted out of repair and in decay as aforesaid, contrary to the tenor and effect, true intent and meaning of the said indenture, and of the covenant of the said W. H. for himself and his executors in that behalf made as aforesaid with the said J. T. and his assigns, to wit, at S. aforesaid, in the county aforesaid: And the said W. S. in fact further says, that after the commencement of the said term, and after the said W. S. became so seised of the said reversion for the said demised premises, and before the determination of the said term, to wit, on the first day of January, in the year of Our Lord 1791, and on divers other days and times between that day and the determination of the said term, to wit, at S. aforesaid, in the county aforesaid, great waste, spoil, and destruction in and upon the said demised premises (by lopping, topping, and stripping divers, to wit, one hundred oaks, one hundred ashes, one hundred elms, and one hundred fellows or small trees standing, growing, and being on the said demised premises, which had not usually been lopped, topped, or stripped) was done and permitted, and suffered and committed, contrary to the form and effect of the said indenture of lease, and the said

1st breach, for not yielding up in repair.

2d breach, waste, lopping trees, &c.

(ASSIGNEE OF) LESSOR (OF THE FREEHOLD, &c.)

d Breach, not
pending ref-
ures.

nants so by the said W. H. made for himself and his executors a
aforesaid with the said J. T. and his assigns: And the said W. S.
further says, that after the commencement of the said term, and
during the continuance thereof, and whilst the said W. S. was so
seised of the said reversion of the said demised premises as afore-
said, to wit, on the said first day of January, in the year of Our
Lord 1791, on divers other days and times between that day and
the determination of the said term, to wit, at S. aforesaid, in the
county aforesaid, divers large quantities of compost, soil, muck,
and dung, to wit, five thousand cart-loads of compost, five thou-
sand cart-loads of soil, five thousand cart-loads of muck, and five
thousand cart-loads of dung, which during the said demised term
had been made from certain straw, fodder, and produce which had
during that time grown upon the said demised premises, were
wrongfully carried off from the said demised premises, and dis-
posed of and used in other manner and elsewhere than by spend-
ing, laying, spreading, and bestowing the same upon the said de-
mised premises, or any part thereof, to wit, at S. aforesaid, con-
trary to the tenor and effect of the said indenture, and of the co-
venant of the said W. H. so by him for himself and his excutors
in this behalf made as aforesaid with the said J. T. and his assigns,
by reason of which said several premises the said demised premises
have been and are very much impoverished and lessened in value,
and made wholly untenable, and the said W. S. assignee as
aforesaid hath thereby been hindered and prevented from letting
the same to so great an advantage as he otherwise could and might
have done, to wit, at S. aforesaid, in the county aforesaid; and
so the said W. S. says, that the said W. H. in his lifetime, nor
the said defendant, executor as aforesaid, have not kept with the
said W. S. assignee as aforesaid, the covenants made by the said
W. H. deceased, for himself and his executors, with the said
J. T. deceased and his assigns (although often requested so to do),
but have broken the same, and to keep the same with the said W. S.
assignee as aforesaid, have respectively wholly refused, and the said
defendant, executor as aforesaid, still doth refuse so to do: And
whereas the said J. T. deceased, before and at the time of mak-
ing the indenture of lease hereafter in this Count mentioned, was
seised in his demesne as of fee of and in the said messuages and
tenements, and the several closes and parcels of land thereunto be-
longing, and therewith held and enjoyed with the appurtenances
in the said indenture hereafter mentioned to be demised, and be-
ing so seised heretofore, to wit, on the twelfth day of August, in
the year 1771, to wit, at S. aforesaid, in the county aforesaid,
by a certain other indenture of lease then and there made between
the said J. T. of the one part, and the said W. H. of the other
part (one part of which said last-mentioned indenture, sealed
with the seal of the said W. H. he the said W. S. brings here
into court, the date whereof is the day and year last aforesaid), for
and in consideration of the yearly rent by the said last-mentioned
indenture contained on the part and behalf of the said W. H. his
executors,

Count, omit-
ting all mention
of the copyhold
part of the pre-
mises.

. AGAINST (EXECUTOR OF) LESSEE.

executors and administrators to be kept, done, and performed, he the said J. T. demised, leased, and to farm let unto the said W. H. deceased, his executors and administrators, all that messuage or tenement and lands called Felhill, situate, lying, and being in S. aforesaid, containing by estimation thirty acres, were the same more or less, and also all that other barn and lands called Angels Inn in S. aforesaid, containing by estimation forty-two acres, were the same more or less, and also all those three closes of land called Wilcrofts, lying in S. aforesaid, containing by estimation nine acres, were the same more or less, and also all those two closes or parcels of land in S. aforesaid, called Wilcrofts, containing by estimation nine acres, were the same more or less, and also all that close of land called Wallets, containing by estimation two acres, were the same more or less, and also all those two closes of land called Ripden, containing by estimation six acres, were the same more or less, and also all those five acres of meadow in Broad Mead; all which said last-mentioned premises were then in the occupation of the said W. H. deceased, and all common ways, waters, easements, profits, commodities, advantages, and appurtenances whatsoever to the same belonging, or in anywise appertaining, except and always reserved out of the said last-mentioned demise and lease unto the said J. T. his heirs and assigns, all and all manner of timber and timber-trees, and all trees likely to be timber, then growing or being, and which at any time during the last-mentioned demise should grow or be in or upon the said last-mentioned demised premises, or any part thereof, to hold the said last-mentioned demised premises unto the said W. H. deceased, his executors, administrators and assigns, from the twentieth day of September then last past, for and during, and unto the full end and term of twenty-one years then next ensuing, and fully to be complete and ended, at and under the rents, reservations, and agreements in the said last-mentioned indenture of lease contained, and the said W. H. deceased did, by the said last-mentioned indenture, for himself, his executors, administrators and assigns (amongst other things) [state the covenants as in 1st Count]; by virtue of which said last-mentioned demise, the said W. H. deceased afterwards, and in the lifetime of the said J. T. deceased, to wit, on the day and year last aforesaid, at S. aforesaid, in the county aforesaid, entered into the said last-mentioned demised premises, with the appurtenances, and was thereof possessed for the said term so to him thereof granted as aforesaid, the reversion of the said last-mentioned premises, with the appurtenances, belonging to the said J. T. deceased, and his heirs and assigns; and the said W. H. deceased being so possessed of the said last-mentioned demised premises, and the reversion thereof belonging to the said J. T. deceased as aforesaid, he the said J. T. deceased, in his lifetime, to wit, on the twentieth day of July, in the year of Our Lord 1778, at S. aforesaid, in the county aforesaid, made and published his last will and testament in writing, by him duly executed and attested, for passing real estates, and

thereby

thereby (amongst other premises) gave and devised the said reversion of the said several premises contained in the said last-mentioned indenture of lease, to the said W. S. his heirs and assigns for ever; and afterwards, to wit, on the thirtieth day of August, in the year of Our Lord 1780, at S. aforesaid, in the county aforesaid, he the said J. T. died without revoking or altering his said last will and testament, and so seised of the said premises contained in the said last-mentioned indenture of lease; by virtue whereof the said W. S. as devisee as last aforesaid of the said J. T. deceased, became and was, and still is seised in his demesne as of fee of and in the said reversion of the said last-mentioned premises: And the said W. S. further says, that although he the said J. T. deceased, in his lifetime, and he the said W. S. since the decease of the said J. T. deceased, always from the commencement of the said demise hitherto have, and each of them respectively hath done, performed, fulfilled, and kept every thing in the said last-mentioned indenture of lease contained on their respective parts and behalfs to be done, performed, fulfilled, and kept: yet the said W. H. deceased, in his lifetime, or his executors or assigns, after the death of the said W. H. deceased, did not, nor did either or any of them perform and fulfil any thing in the said indenture contained on the part and behalf of the lessee and his assigns to be done and performed: In fact the said W. S. says, that the said J. T. deceased, in his lifetime, and the said W. S. since his decease, were always ready and willing during the said term so demised as aforesaid, to allow sufficient and necessary rough timber in the stem on the said demised premises, for the doing of the repairs of the said demised premises; and although the said W. H. and his assigns, from the said commencement of the said last-mentioned term till the expiration thereof, which happened on the twenty-ninth day of September, in the year of Our Lord 1791, held and enjoyed the said demised premises, with the appurtenances, under and by virtue of the said lease, when the same was duly surrendered and delivered up to the said W. S. assignee as aforesaid of the said reversion thereof, to wit, at S. aforesaid, in the county aforesaid. Yet the said W. S. in fact says, that, &c. 1st and 2d breaches same as 1st Count). (3d Breach): And the said W. S. further says, that after the commencement of the said last-mentioned term, and during the continuance thereof, and whilst the said W. H. was so seised of the said reversion of the said last-mentioned demised premises as aforesaid, to wit, on the said first day of January, in the year of Our Lord 1791, and on divers other days and times between that day and the determination of the said term, to wit, at S. aforesaid, in the county aforesaid, divers large quantities of straw, halm, and fodder, to wit, one thousand cart-loads of straw, one thousand cart-loads of halm or fodder, besides hay, which during the said last-mentioned demise grew, arose, and increased upon and from the said last-mentioned demised premises, were there wrongfully sold and carried off from the said last-mentioned demised premises, and disposed of and used in other manner

AGAINST EXECUTOR OF LESSEE. PLEA PY.

manner than converting and making the same into dung, Soil, and compost, in and upon the said last-mentioned demised premises, or any part thereof, and the dung, soil, and compost arising from the crop of the last year of the said last-mentioned demise were not, according to the tenor of the said last-mentioned indenture, and the covenant therein in that behalf contained in an husband-like manner carried out, laid, spread, spent, and bestowed in and upon the said last-mentioned demised premises, or any part thereof, for the better manuring the same (except such dung, soil, and compost as did arise, and was made in the last year of the said last-mentioned demise, and which was not proper to be carried out or laid on the said last-mentioned premises: And the said W. S. further says, that the said last-mentioned dung, soil, and compost, was not, at the end of the said last-mentioned demise, left in a hill or some convenient part of the said last-mentioned premises, according to the said covenant in the said indenture of demise in that behalf contained: And the said W. S. further says, that though after the commencement of the said term, and before the determination thereof, and after the said W. S. became so seised of the said reversion of the said demised premises as aforesaid, to wit, on the said first day of January, in the year of Our Lord 1791. and on divers other days and times between that day and the determination of the said term, a great extent of underwood and hedge-rows of and belonging to the said last-mentioned demised premises were cut, yet the hedges and fences where the hedge-rows and underwoods stood, and next adjoining thereto, were not made in a substantial and workmanlike manner, contrary to the form and effect of the said last-mentioned indenture, and of the covenant of the said W. H. for himself and his executors, with the said J. T. and his assigns so therein made in that behalf as aforesaid; and so the said W. S. says, that the said W. H. in his lifetime, and the said defendant, executor as aforesaid, has not kept with the said W. S. assignee (although often requested so to do), but have broken the same, and to keep the same with the said W. S. assignee as aforesaid, have respectively wholly refused, and the said defendant, executor as aforesaid, still doth refuse; whereupon the said W. S. saith he is injured, and hath sustained damage to the value of one thousand pounds; and therefore he brings his suit, &c.

S. LE BLANC.

And the said James, by Richard Welch his attorney, comes and defends the wrong and injury, when, &c. and says, that the said W. S. ought not to have or maintain his aforesaid action thereof against him, because he says that no goods or chattels which were of the said W. H. at the time of his death, have come to the hands of the said James to be administered; and this he the said James is ready to verify; wherefore he prays judgment if the said W. S. ought to have or maintain his aforesaid action thereof against him. And for a further plea in this behalf, by leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, the said James

Plea 1st, nothing come to him executor.

2d Plea, plea administravit.

says,

says, that the said W. S. ought not to have or maintain his aforesaid action against him; because he says, that he hath fully administered all and singular the goods and chattels which were of the said W. H. at the time of his death, and which have ever come to or been in the hands of the said James to be administered, to wit, at S. aforesaid, in the said county; and that he the said James hath not, nor on the day of the suing out of the original writ of the said W. S. in this behalf, or at any time since, had any goods or chattels which were of the said W. H. at the time of his death in the hands of the said James to be administered; and this the said James is ready to verify; wherefore he prays judgment if the said W. S. ought to have or maintain his aforesaid action against him: And for a further plea in this behalf as to the said supposed breaches of covenant in the first Count of the said declaration mentioned, the said James, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that he the said James ought not to be charged with the said supposed breaches of covenant, or with any of them, by virtue of the said supposed indenture of lease in the said first Count of the said declaration above mentioned; because he says, that the said indenture of lease is not the deed of the said W. H.; and of this the said James puts himself upon the country: And for a further plea in this behalf as to the said breach of covenant in the first Count of the said declaration first above assigned, the said James, by leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said W. S. ought not to have or maintain his aforesaid action thereof against him; because he says, that the said demised premises in the said first Count of the said declaration mentioned, were not, nor was any part thereof suffered or permitted to be ruinous, out of repair, or in decay, or left or quitted ruinous, out of repair, or in decay, in manner and form as the said W. S. hath above thereof complained against the said James; and of this the said James puts himself upon the country: And for a further plea in this behalf as to the said breach of covenant in the said first Count of the said declaration secondly above assigned, the said James, by like leave, &c. *actio non*; because he says, that waste, spoil, or destruction, in or upon the said demised premises in the said declaration mentioned, by lopping, topping, or stripping the said trees in the said breach mentioned, or any of them, was not done, or permitted, or suffered to be done or committed in manner and form as the said W. S. hath above thereof complained against the said James; and of this the said James puts himself upon the country: And for further plea in this behalf as to the said breach of covenant in the said first Count of the said declaration lastly above assigned, the said James, by like leave, &c. *actio non*; because he says, that the said compost, soil, muck, or dung in the said breach mentioned, was not, nor was any part thereof carried off from the said demised premises in the said first Count in the said declaration mentioned, or disposed of or used in any other manner

3d Plea non est
factum.

4th Plea, to wit
breach performance.

5th Plea, to wit
breach performance.

6th and like plea
last breach.

COVENANT.—PLEAS IN DENIAL, PERFORMANCE.

manner or elsewhere, than by spending, laying, spreading, and bestowing the same upon the said demised premises, in manner and form as the said W. S. hath above thereof complained against the said James; and of this the said James putteth himself upon the country: And for a further plea in this behalf as to the said supposed breaches of covenant in the said last Count of the said declaration above assigned, the said James, by like leave, &c. says, that the said James ought not to be charged with the said supposed breaches of covenant, or any of them, by virtue of the said supposed indenture of lease in the said last Count of the said declaration mentioned; because he says, that the said indenture of lease is not the deed of the said W. H.; and of this he the said James puts himself upon the country: And for a further plea in this behalf as to the said breach of covenant in the said last Count in the said declaration first above assigned, the said James, by like leave, &c. *actio non*; because he says, that the said demised premises in the said last Count of the said declaration mentioned, were not, nor was any part thereof suffered or permitted to be ruinous, out of repair, or in decay, or left or quitted ruinous, out of repair, or in decay, in manner and form as the said W. S. hath above thereof complained against the said James; and of this the said James puts himself upon the country, &c.; And for a further plea in this behalf as to the said breach of covenant in the said last Count of the said declaration secondly above assigned, the said James, by like leave, &c. *actio non*; because he says, that waste, spoil, or destruction in or upon the said demised premises, in the said last Count of the said declaration mentioned, by lopping, topping, or stripping the said trees in that breach mentioned, or any of them, was not done, or permitted, or suffered to be done, in manner and form as the said W. S. hath above thereof complained against the said James; and of this the said James puts himself upon the country, &c.: And for a further plea in this behalf as to the said breach of covenant in the said last Count of the said declaration thirdly above assigned, the said James, by like leave, &c. *actio non*; because he says, that the said straw, halm, and fodder in that breach mentioned, was not, nor was any part thereof sold or carried off from the said demised premises in the said last Count of the said declaration mentioned, or disposed of, or used in other manner than converting and making the same into dung, soil, and compost, in and upon the said demised premises, in manner and form as the said W. S. hath above thereof complained against the said James, and that the dung, soil, and compost in that breach mentioned, and not therein excepted, was according to the tenor of the said indenture in the last Count in the said declaration mentioned and covenant made therein in that behalf in an husbandlike manner carried, laid out, spread, spent, and bestowed in and upon the said demised premises for the better manuring the same; and of this the said James puts himself upon the country: And for a further plea in this behalf as to the said breach of covenant in the said last Count in the said declaration fourthly above assigned, the said James, by

7th Plea, to covenant, Count 1st, non est factum.

8th. &c. pleas to last Count say as to 1st breach

9th Plea.

10th Plea.

11th Plea.

like

24th Plea.

like leave, &c. *actio non*; because he says, that the said dung, soil, and compost in that breach mentioned, was at the end of the said demise in the said last Count of the declaration mentioned, according to the tenor of the demise in that Count mentioned, and the covenant therein made in that behalf as aforesaid; and of this the said James puts himself upon the country, &c.: And for a further plea in this behalf as to the said breach of covenant in the said last-mentioned Count in the said declaration lastly above assigned, the said James, by like leave, &c. *actio non*; because he says, that when and as often as any of the underwood and hedgerows, part of the said demised premises in the last Count of the said declaration mentioned, were cut, the hedges and fences where the said hedgerows and underwood stood, and next adjoining thereto, were made in a substantial and workmanlike manner, according to the form and effect of the said indenture in the said last Count in the said declaration mentioned; and of the covenant to therein made in that behalf as aforesaid, and of this the said James puts himself

24th Plea, accep-
tance of certain
fixtures is a
satisfaction.

upon the country, &c.: And for a further plea in this behalf as to the said breach of covenant in the said first Count of the said declaration first above assigned, the said James, by like leave, &c. *actio non*; because he says, that the said W. S. at the end and expiration of the said term in the said first Count of the said declaration mentioned, to wit, on the twenty-ninth day of September, in the year of Our Lord 1791, at St. aforesaid, in the county aforesaid, took, accepted, and received certain window sashes, joists, shutters, a door-frame, a wooden step, a wooden floor, and a necessary-house, and certain improvements made on the said premises, in full satisfaction and discharge of all the damages hitherto sustained by the said W. S. by reason of the said breach of covenant in the said first Count of the said declaration first above assigned, and this the said James is ready to verify; wherefore he prays judgment if the said W. S. ought to have or maintain his aforesaid action thereof against him, &c.: And for a further plea in this behalf as to the said breach of covenant in the said last Count of the said declaration first above assigned, the said James, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, *actio non*; because he says, that the said W. S. at the end and expiration of the said term in that Count mentioned, to wit, on the twenty-ninth day of September, in the year of Our Lord 1791, at St. aforesaid, in the county aforesaid, took, accepted, and received certain window-sashes, joists, shutters, a door-frame, a stone step, a wooden floor, a necessary-house, with certain improvements made on the said premises, in full satisfaction and discharge of all the damages of the said W. S. hitherto sustained by reason of the said breach of covenant in the said last Count of the said declaration first above assigned; and this the said James is ready to verify; wherefore he prays judgment if the said W. S. ought to have or maintain his aforesaid action thereof against him.

24th Plea.

WILLIAM COCKELL.

And

COVENANT.—REPLICATION.

And the said W. S. says, that he by any thing by the said James in his first plea above alledged, ought not to be barred from having or maintaining his aforesaid action thereof against him the said James; because he the said W. S. saith, that divers goods and chattels which were of the said W. H. at the time of his death, have since his death, to wit, on the twenty-ninth day of September, in the year of Our Lord 1791, at S. aforesaid, in the county aforesaid, come to the hands of the said James to be administered of a large value, to wit, of the value of one thousand pounds, whereby he might and ought to have satisfied to the said W. S. his damages aforesaid, and thus the said W. S. prays may be enquired of by the country, &c. : And as to the said plea of the said James by him secondly above pleaded in bar, he the said W. S. says, that he ought not, by reason of any thing therein alledged, to be barred from having and maintaining his aforesaid action thereof against the said James; because he the said W. S. says, that he the said James at the time of the issuing out of the original writ of him the said W. S. to wit, on the day and year last aforesaid, in the county aforesaid, had divers goods and chattels which were of the said W. H. deceased, at the time of his death, in his the said James's hands and possession to be administered, of a large value, to wit, of the value of one thousand pounds, whereby he could and ought to have paid and satisfied unto the said W. S. the damage aforesaid, to wit, at S. aforesaid; and thus he the said W. S. prays may be enquired of by the country, &c. : And as to the said plea of the said James by him thirdly above pleaded in bar, and whereof he hath put himself on the country, the said W. S. doth the like, &c. : And as to the said plea of the said James by him fourthly above pleaded in bar, and whereof he hath put himself upon the country, the said W. S. doth the like, &c. : And as to the said plea of the said James by him fifthly above pleaded in bar, and whereof he hath put himself upon the country, the said W. S. doth the like, &c. : And as to the said plea of the said James by him sixthly above pleaded in bar, whereof he hath put himself upon the country, the said W. S. doth the like, &c. : And as to the said plea of the said James by him seventhly above pleaded in bar, and whereof he hath put himself upon the country, &c. the said W. S. doth the like, &c. : And as to the said plea of the said James by him eighthly above pleaded in bar, and whereof he hath put himself upon the country, the said W. S. doth the like, &c. : And as to the said plea of the said James by him ninthly above pleaded in bar, and whereof he hath put himself upon the country, the said W. S. doth the like, &c. : And as to the said plea of the said James by him tenthly above pleaded in bar, and whereof he hath put himself upon the country, the said W. S. doth the like, &c. : And as to the said plea of the said James by him eleventhly above pleaded in bar, and whereof he hath put himself upon the country, the said W. S. doth the like, &c. : And as to the said plea of the said James by him twelfthly above pleaded in bar, and whereof he hath put himself upon the country, the said W. S. doth

Replication, if
sue on each
plea.

doth the like, &c. : And as to the said plea of the said James by him thirteenthly above pleaded in bar, he the said W. S. says, that by reason of any thing therein alledged he ought not to be barred from having and maintaining his aforesaid action thereof against him the said James ; because he says, that he did not take, accept, and receive the said window-sashes, joists, shutters, door-frame, stone step, wooden floor, and necessary-house, and improvements, made on the said premises in satisfaction and discharge of the damages sustained by the said W. S. by reason of the said breach of covenant in the said first Count of the said declaration first above assigned ; and this the said W. S. prays may be enquired of by the country, &c. : And as to the said plea of the said James by him lastly above pleaded in bar as to the said breach of covenant lastly first above assigned, he the said W. S. says, that he by reason of any thing therein alledged, ought not to be barred from having and maintaining his aforesaid action thereof against the said James ; because he says, that he did not take, accept, and receive the said window-sashes, joists, shutters, door-frame, stone step, wooden floor, necessary-house, and improvements made on the said premises in satisfaction and discharge of the damages by the said W. S. sustained by reason of the said breach of covenant in the said last Count in the said declaration first above assigned ; and this he the said W. S. prays may be enquired of by the country, &c.

GEORGE BOND.

Against barren and feme and others, the fine and the others being assignees of the lessee of coal pits, for various breaches of covenant before and after their marriage. MIDDLESEX, to wit. Robert Morris, esquire, complains of John Smith, John Oliver Williams, and Charlotte his wife, and Sarah Townsend (which said John, John Oliver, Charlotte, and Sarah are assignees of C. Townsend) being, &c. of a plea of covenant broken ; for that whereas by a certain indenture made the twenty-fourth day of May, A. D. 1769, at W. in the county of M. between the said Robert, by the name and description of Robert Morris, of Swansea, in the county of Glamorgan, esquire, of the one part, and the said C. Townsend, by the name and description of Channey Townsend, of Sainfainlet, in the said county of G. esquire, of the other part, one part of which said indenture, sealed with the seal of the said Channey, the same Robert now brings here into court, bearing date the same day and year aforesaid : It is witnessed that for and in consideration of the rents, profits, reversions, covenants, and agreements, thereafter reserved, mentioned, and contained on the part and behalf of him the said Channey, his executors, administrators, and assigns, to be paid, kept, done, and performed, he the said Robert had granted, demised, and to farm let and in and by the said indenture did, &c. unto the said C. his executors, administrators, and assigns, all that piece or parcel of ground situate, lying, and being in the parish of L. in the said county of G. being part or parcel of a certain field there commonly called or known by the name of Carpyndes, for the purpose of sinking one or more pit or pits, and erecting

erecting one or more engine or engines, and making a convenient waggon way, as thereafter and hereinafter mentioned, as the same piece or parcel of ground was then staked or marked off from the said field called C. and containing by admeasurement one rood, eight poles and a half, little more or less, and also all and singular the veins, mines, and seams of coals, and coken coal, and coal works, and coal pits which then were or which should or might at any time or times thereafter, during the continuance of the said demise or lease, be found out or discovered in, upon, or under all that tenement, lands, and hereditaments, with them and every of their appurtenances, situate, &c. in that parish of L. in said county of G. commonly called, &c. P. or by whatsoever other name, &c. &c. with free passage to said C. &c. to dig for such coals, &c. &c. &c. *habendum* for twenty-five years redemption, &c. and the said C. for himself, his executors, and administrators, did covenant, promise, and agree to and with the said Robert, his heirs, and assigns, by the said indenture in manner and form following, that is to say, that he the said C. his executors, administrators, and assigns, should and would from time to time, and at all times thereafter during the said term thereby demised, well and truly pay, &c. the rents without deduction; to continue to try for coals, and get into working thereof within three years from the day of the date of the said indenture; within one month after finding coal (unless hindered or prevented by unavoidable accident), to work and raise nine hundred weys yearly, if so much could be raised, and if less than nine hundred weys should be raised to pay nine shillings and sixpence for every wey deficient; if no such pit sunk within three years, to pay nine shillings and sixpence per wey for nine hundred weys yearly, from the end of the three years; to keep the coals raised out of the premises separate from coals raised out of other lands; to sell the coals raised whenever he could for a merchantable price; to plant waggon ways which should be made on every side with quick, as by the said indenture relation being thereunto had, will amongst other things more fully appear; by virtue of which said demise the said C. afterwards, to wit, on the twenty-fifth day of May, A. D. 1769 aforesaid, in the said parish of L. entered into the said demise, with the appurtenances, and was possessed thereof, and used, exercised, and enjoyed the liberties, powers, and authorities by the said indenture granted as aforesaid, and afterwards and before any of the breaches of covenant hereinafter assigned, and before the intermarriage of the said John Oliver and Charlotte, to wit, on the first day of March 1770, at the parish of L. aforesaid, all the then residue of the term, estate, and interest aforesaid of the said C. of and in the said demised premises, with the appurtenances, with the liberties, powers, and authorities by the said indenture granted as aforesaid, lawfully came to the said John Smith, Charlotte, and Sarah, by assignment thereof, by virtue thereof they the said J. S. C. and S. then and there entered into the said premises, with the appurtenances, and were possessed thereof, and used, oc-

By virtue of which said demise, &c.

Residue of the term came to Smith, Sarah, and Charlotte, the wife of the other defendant. By virtue, &c.

*Charlotte inter-
married with
John Oliver the
other defendant
By virtue, &c.

Although plain-
tiff had per-
formed, &c.

Yet protesting

1st Breach, sh.
7s. of said rent
of 9s. for 13
years, ending
25th March
1782, on the
25th March in
that year were
in arrear.

2d Breach, de-
fendants Smith,
Charlotte, and
Sarah, before
the marriage of
Charlotte and
Oliver, and said
other defendant
1 Oliver since,
from 2d of
March 1770, to
1st March 1782,
have raised and
10,000
weys of coal,
the said coals not
exceeding 10,000
weys in each
year, whereby
they were liable
to pay to plain-
tiff 4750^l. at
9s. 6d. per wey, yet have not paid, &c.

cupied, and enjoyed the same, and used, exercised, and enjoyed the said liberties, powers, and authorities, and being so possessed thereof, the said Charlotte afterwards, to wit, on the first of January, A. D. 1777, at the parish of L. aforesaid, intermarried with the said John Oliver, by virtue whereof the said Thomas Smith, and the said John Oliver and Charlotte, in right of the said Charlotte, and the said Charlotte became and from thenceforth hitherto have been possessed of the said demised premises, liberties, powers, and authorities; and although the said Robert has always well and truly performed, fulfilled, and kept all and singular the covenants, clauses, and agreements in the said indenture contained on his part and behalf to be performed, fulfilled, and kept: Yet protesting that the said John Smith, Charlotte, and Sarah, before the intermarriage of the said John Oliver and Charlotte, and the said John Smith, John Oliver, Charlotte, and the said Sarah, since the intermarriage of the said John Oliver and Charlotte, have not performed, fulfilled, or kept any of the clauses, covenants, and agreements in the said indenture contained, on their part and behalf to be performed, fulfilled, and kept; the said Robert in fact says, that five pounds seventeen shillings of the said yearly rent of nine shillings for thirteen years of said term, ending on the twenty-sixth day of March 1782, and which have elapsed since the said assignment of the said demised premises as aforesaid, on the twenty fifth of March in that year, and since the said assignment of the said demised premises as aforesaid, became, were, and still are in arrear and unpaid from the said John Smith, John Oliver, Charlotte, and Sarah, according to the form and effect of the said covenant of the said C. so made in that behalf as aforesaid, ought to have paid; but have not paid, or caused to be paid the same to the said Robert, and the same is still due, and owing, and in arrear from the said John Smith, John Oliver, Charlotte, and Sarah to the said Robert, contrary to the form and effect of the said covenant in that behalf made as aforesaid: And the said Robert further in fact saith, that since the said assignment of the said demised premises as aforesaid, to wit, on the second day of March 1770, and on divers other days and times between that day and the first day of March 1782, the said J. S. C. and S. before the intermarriage of the said J. O. and C. and the said John Smith, John Oliver, Charlotte, and Sarah, since the intermarriage of the said John Oliver and Charlotte, have wrought, raised, and landed from under, and out of the aforesaid premises, and sold, used, shipped, and sent away from thence, divers ten thousand weys of coals, every such wey containing twenty-five of the usual carts, being four feet long, two feet broad, and thirteen inches deep, heaped top full, other than such coals as the said Robert was to have for his own use, as in the said indenture mentioned, and other than such coals as were therein allowed to be used and burnt at any fire engine for the drawing or working the said coal works, and the said coal so wrought, raised, and landed as aforesaid, did not exceed one thousand weys in any or either of the said years

AGAINST (ASSIGNEES or) LESSEE.

wherein they were so wrought, raised, and landed as aforesaid, whereby the said John Smith, Charlotte, and Sarah, before the intermarriage of the said John Oliver and Charlotte, and the said John Smith, John Oliver, Charlotte, and Sarah, after the intermarriage of the said John Oliver and Charlotte, became liable to account for and pay, and ought to have duly accounted for and paid to the said Robert divers large sums of money, amounting to the sum of four thousand seven hundred and fifty pounds, being at and after the rate of nine shillings and sixpence of like lawful money for every of the last-mentioned weys of coal quarterly, on each quarter day which happened next after the same were sold, used, shipped, or sent away from the said premises as aforesaid, according to the form and effect of the covenant of the said C. in that behalf made as aforesaid; yet the said J. S. C. and S. before the intermarriage of the said John Oliver and Charlotte, and the said John Smith, John Oliver, Charlotte, and Sarah, since the intermarriage of the said John Oliver and Charlotte, have not duly accounted for and paid the same, or any part thereof to the said Robert, quarterly, on each or any of the respective days which happened next after the said weys of coal, or any of them so wrought, raised, and landed as aforesaid, were sold, used, shipped, or sent away from the said premises, nor have they or any of them (although often requested), at any time hitherto accounted for or paid the same, or any part thereof, to the said Robert, but they have hitherto wholly refused and neglected so to do, contrary to the form and effect of the said covenant of the said Channey so made in that behalf as aforesaid: And the said Robert further says, that although the said demised premises came by assignment to the said John Smith, Charlotte, and Sarah, long before the expiration of three years from the day of the date of the said indenture, yet after the said assignment of the said demised premises as aforesaid, and before the intermarriage of the said John Oliver and Charlotte, the said John Smith, Charlotte, and Sarah, and since the intermarriage, the said John Smith, John Oliver, Charlotte, and the said Sarah did not continue diligently at their own proper costs and charges to try and search for the veins, mines, and seams of coal and culm in and under the aforesaid premises, and did not use their utmost skill and endeavour to attain and come at the same, and get into working thereof within three years from the day of the date of the said indenture, by such pits, engines, devices, and methods as were then usual and necessary in such cases, according to the form and effect of the covenant of the said Channey in that behalf made as aforesaid, but on the contrary thereof entirely omitted and neglected so to do, contrary to the form and effect of the covenant of the said Channey in that behalf made as aforesaid: And the said Robert in fact further says, that the said John Smith, John Oliver, Charlotte, and Sarah, since the said assignment of the said demised premises as aforesaid, and since the intermarriage of the said John

3d Breach; though said premises came to Smith, Charlotte and Sarah, in three years after the date of the lease, yet they before the marriage, and John Oliver, since did not continue to try for coal, and use their utmost endeavours to get into working thereof in three years from the date of the lease.

4th Breach, in March 1778, the defendants sunk a pit and found coal, and though not prevented

by unavoidable accident, in one month after, and from thence hitherto desisted working

COVENANT BY LESSOR

Oliver and Charlotte, to wit, on the first of March 1778, did sink a pit in the said tenement and land called P. and then and there came at and found divers mines, veins, and seams of coal in and under the same; nevertheless the said John Smith, John Oliver, Charlotte, and Sarah, did not from time to time, and at all times then next following, during the continuance of the said demise, hitherto (*although not hindered or prevented by any unavoidable accident or accidents*), effectually work and carry on the due working of the coal mines, according to the form and effect of the covenant of the said Channey in that behalf made as aforesaid, but on the contrary thereof the said John Smith, John Oliver, Charlotte, and Sarah entirely neglected and refused so to do, and after one month, and after they had so sunk a pit and come at and found coals as last aforesaid, to wit, on the twenty fourth of June, A.D. 1779, and for a long space of time, to wit, continually from thence hitherto (although during all or any part of that time not hindered or prevented by any unavoidable accident or accidents) totally desisted from working and carrying on the working of the said coal mines, contrary to the form and effect of the covenant of the said Channey in that behalf made as aforesaid: And the said Robert further in fact says, that nine hundred weys of good and merchantable coal yearly, and every year, during the continuance of the said demise, after the sinking of the said pit and getting at coal as last aforesaid, hitherto could and might have been had, worked, raised, and gotten from and out of the said demised premises, without working the pillars necessary to support the said work, yet the said John Smith, John Oliver, Charlotte, and Sarah, after the sinking of the same pit, and getting at coal as last aforesaid, did not work, raise, land, use, sell and dispose of nine hundred weys of coal from and out of the said premises yearly, and every year during the continuance of the said demise hitherto, but during all that time neglected and omitted so to do, and only worked, raised, landed, used, sold and disposed of a small part thereof, whereby the said John Smith, John Oliver, Charlotte, and Sarah, became liable to pay, and ought to have paid to the said Robert the sum of nine shillings and sixpence, of like lawful money, for each and every wey of coals which the said John Smith, John Oliver, Charlotte, and Sarah omitted and neglected to raise as aforesaid, and which were deficient of the said quantity of nine hundred weys of coals in each of those years respectively at the end of each such year; yet the said John Smith, John Oliver, Charlotte, and Sarah, did not pay the said sums of money last-mentioned, or any of them, at the end of each such year, nor have they, or any or either of them (although often requested), at any time hitherto paid the same, or any part thereof to the said Robert, but have hitherto wholly neglected and refused so to do, contrary to the form and effect of the covenant of the said Channey in that behalf made as aforesaid: And the said Robert further says, that the said Channey and his said assigns, and every of them, did in that behalf made as aforesaid: And the said Robert further says, that the said Channey and his said assigns, and every of them, did

in Breach, 900 weys of coal might have been raised yearly, after sinking said pit, without working the pillars, yet defendants have not paid 9s 6d. per wey for every deficient of 900 weys raised in each year since the sinking of the said pit.

in Breach, that original lessee and defendants, his assigns, and Smith, Charlotte, and Sarah, before the marriage and O. since, have not paid 9s. and 6d. per wey yearly, for 900 weys till pit was sunk.

neglect

AGAINST (ASSIGNEES OF) LESSEE.

neglect and omit to sink a sufficient and proper pit for the purpose of working the said coal, within the space of three years next ensuing the day of the date of the said indenture, *(a) if no such pit was sunk within the said space of three years*; yet t^e said John Smith, Charlotte, and Sarah, before the intermarriage of t^h said John Oliver and Charlotte, and the said John Oliver, Charlotte, and Sarah, since the said intermarriage of the said John Oliver and Charlotte, and since the said assignment, did not well and truly pay, or cause to be paid unto the said Robert the sum of nine shillings and sixpence per wey, yearly and every year, for nine hundred weys, until such sufficient and proper pit as aforesaid was sunk, according to the form and effect of the said indenture, and of the covenant so made in that behalf as aforesaid: And the said Robert further in fact saith, that the said John Smith, John Oliver, Charlotte, and Sarah, since the assignment of the said demised premises, and since the intermarriage of the said J. O. and Charlotte, did not from time to time, and at all times during the said demised term, keep all and every the coal which during that time was wrought, raised, and landed from and out of the premises, by the said indenture demised, separated, and apart from the coal which they have, during that time, worked, landed, and raised from and out of land and premises of other persons, by a wood partition made and set up for that purpose, and the same coal so separated and parted, did not keep and continue to until the same were sold, used, or shipped off, according to the form and effect of the covenant of the said Chancery in that behalf made as aforesaid, but on the contrary thereof have entirely neglected and omitted to do, and the said J. S. T. O. C. and S. since the said assignment of the said demised premises as aforesaid, and since the intermarriage of the said J. O. and C. to wit, on the first day of January, A. D. 1779, and on divers other days and times between that day and the day of exhibiting this bill, mixed and put together divers large quantities, to wit, five hundred weys of coal, which since the said assignment and intermarriage aforesaid, and during the said term had been wrought, raised, and landed from and out of the said demised premises, with divers large quantities of coal which they had during that time worked, landed, and raised from and out of the lands and premises of one John Popkin, and of one Sir Watkin Lewes, knight, before the said coals wrought, raised, and landed as aforesaid from and out of the said demised premises, were sold, used, and shipped off, contrary to the form and effect of the covenant of the said C. in that behalf made as aforesaid: And the said Robert further in fact says, that they the said John Smith, John Oliver, Charlotte, and Sarah, since the said assignment of the said demised premises as aforesaid, and since the intermarriage of the said J. O. and C. did not from time to time, and at all times thereafter, sell and dispose of all such coal as since that time was wrought,

7th Breach, defendants have not kept the coal raised from said premises separated from coal raised from other land, but have mixed 500 weys raised from said premises with coal raised from lands of John Popkin and Sir W. Lewes.

8th Breach, defendants have not sold all the coal raised whenever they could for a merchantable price, but have suf-

ficed 500 weys to remain unsold, though they could have sold the same for a merchantable price.

(a) *2d.* If something is not wanting, or if the words in italic might not be left out.

8th Breach, defendants made a waggon way in said demised premises, but have not planted sides with quick.

And so plaintiff saith, &c.

raised, and landed from and out of the said demised premises, whenever they could dispose of the same for a merchantable price, according to the form and effect of the said covenant of the said C. in that behalf made as aforesaid, but on the contrary thereof neglected and omitted so to do, and therefor permitted and suffered divers large quantities, to wit, five hundred weys of coal which thereafter had been wrought, raised, and landed from and out of the premises by the said indenture demised, to be, remain, and continue unfold and undisposed of for a large space of time, to wit, continually from the first day of January, A. D. 1770, hitherto at the parish of L. aforesaid, although they the said J. S. J. O. C. and S. during the time last aforesaid, to wit, on the same day and year last aforesaid, and since at the parish of L. aforesaid, could have disposed of the same for a merchantable price, contrary to the form and effect of the covenant of the said C. in that behalf made as aforesaid: And the said Robert further in fact says, that since the said assignment of the said demised premises as aforesaid, and after the intermarriage of the said J. O. and C. to wit, on the first day of January, A. D. 1779, they the said J. S. J. O. C. and S. caused a certain waggon way to be made on upon and through the said demised premises, parcel of the said field called Carpyndy; yet the said J. S. J. O. C. and S. did not then, or at any time hitherto cause the same to be planted on every side, and well set with quick, according to the form and effect of the covenant of the said Channey in that behalf made as aforesaid, but on the contrary thereof wholly neglected and refused to do, and permitted and suffered the same waggon way always from the time of making thereof hitherto to be and remain, and the same still is and remains wholly unplanted on the sides thereof, and unset with quick, contrary to the form and effect of the covenant of the said Channey in that behalf made as aforesaid: And to the said Robert saith, that the said J. S. C. and S. since the said assignment of the said demised premises as aforesaid, and before the intermarriage of the said J. O. and C. have not, although often requested, kept with the said Robert the covenant aforesaid of the said Channey to made with said Robert as aforesaid, but have broken the same, and to keep the same with said Robert the said J. S. C. and S. before the intermarriage of the said J. O. and C. and the said J. S. J. O. C. and S. since the intermarriage of said J. O. and C. have hitherto altogether refused, and still do refuse, to the damage of said Robert of four thousand pounds; and therefore he brings suit, &c.

Pleas.

Impairance to
Easter.

And now at this day, that is to say on Wednesday next, after fifteen days from the day of Easter in this said term, until which day it is pleaded, as to all the breaches, lessee died, leaving J. N. Elizabeth, wife of defendant J. S. said Charlotte and Sarah, co-tenants, and said James, John Smith, and Elizabeth, in right of said Elizabeth and Charlotte, and S. duly pro of said said, and by came entitled to said demised premises for the residue of said term, said Charlotte married John O'Ver, whereby said James, John Smith, and Elizabeth, in right of said Elizabeth, J. O. and Charlotte, of said Charlotte and Sarah, became entitled to said demised premises for the residue of said term, without this, that the residue of said term came to said Smith, Charlotte, and Sarah, as plaintiff hath alleged.

day

PERFORMANCE, AND EXCUSE OF PERFORMANCE.

day the said J. S. J. O. and C. and S. had leave to imparl to the said bill, and then to answer, &c. as well the said Robert by his said attorney, as the said J. S. J. O. C. and S. by D. Sill their attorney, do come before our lord the king, at Westminster, and the said J. S. J. O. C. and S. defend the wrong and injury, when, &c. and as to all the said supposed breaches of covenant in the said declaration above assigned, say *ad id non*; because they say, that the said Channey, the seventh day of March, A.D. 1765, at W. aforesaid, duly made his will and testament in writing, and thereby appointed one John Townsend, esquire, and Elizabeth the wife of the said John, and the said C. and S. executors and executrices; and afterwards, and after he the said Channey entered into the said demised premises, with the appurtenances, and while he was so possessed thereof, and used, exercised, and enjoyed the liberties, powers, and authorities as in and by the said declaration is alleged, to wit, on the twenty-eighth of March, A. D. 1770, at W. aforesaid, died possessed of said demised premises, and entitled to the exercise and enjoyment of the liberties, powers, and authorities by the said indenture granted as aforesaid, for the then residue and remainder of the said term of forty five years, without revoking or altering his said will, after whose death, to wit, on the same day and year last aforesaid, the said John and Elizabeth his wife (in said right of said Elizabeth), Charlotte, and Sarah, duly proved said will, and took upon themselves the execution thereof, and the said John and Elizabeth his wife (in right of said Elizabeth), and Charlotte, and Sarah, then and there entered into said demised premises, with the appurtenances, and to the use, exercise, and enjoyment of the liberties, powers, and authorities by the said indenture granted as aforesaid for the then residue and remainder of the said term of forty five years, and remained and continued to possess and be entitled as last aforesaid, until the intermarriage of the said Charlotte with the said J. O. as hereinafter is mentioned: And the said John, John O. and C. and S. further say, that they the said John, and Elizabeth his wife, and C. and S. being so possessed and entitled as aforesaid, she the said Charlotte afterwards, to wit, on the tenth day of February 1772, at W. aforesaid, intermarried with and took to husband the said J. O.; whereby the said John, and Elizabeth his wife (in right of the said Elizabeth), John Oliver, and Charlotte his wife (in right of the said Charlotte), and the said S. then and there became and were possessed of and entitled unto the said demised premises, with the appurtenances, and to the use, exercise, and enjoyment of the liberties, powers, and authorities by the said indenture granted as aforesaid, for the then residue and remainder of the said term of forty-five years, and the said John, and Elizabeth his wife, in right of the said Elizabeth, John Oliver, and Charlotte his wife, in right of said Charlotte, and the said S. from thenceforth hitherto have been and still are so possessed and entitled, without this, that the residue of the term, estate, and interest aforesaid of the said Channey of and

Without this.

in the said demised premises, with the appurtenances, and the liberties, powers, and authorities by the said indenture granted as aforesaid, came to the said John, Charlotte, and Sarah, by assignment, in manner and form as the said Robert hath in and by the said declaration first above alledged; and this they are ready to verify; wherefore they pray judgment if the said Robert ought to have or maintain his aforesaid action thereof against him, &c.: And for further plea in this behalf as to the said five pounds seven shillings of the said yearly rent of nine shillings by the said breach of covenant in the said declaration first above assigned, supposed to have become to be in arrear and unpaid from the said John, John Oliver, Charlotte, and Sarah, to the said Robert for thirteen years of the said term, ending on the said twenty-sixth day of March, A. D. 1782, and which are in and by that breach of covenant supposed to have elapsed since the said assignment of the said demised premises in the said declaration mentioned, on the twenty-fifth of March in that year, the said John, John O. Charlotte, and Sarah, by leave, &c. *attio non*, because they say, that nothing of the said rent is in arrear from the said John, John O. Charlotte, and Sarah, to the said Robert, and of this they put themselves upon the country: And for further plea in this behalf as to the said breach of covenant in the said declaration secondly above assigned, they the said John, John O. Charlotte, and Sarah, by like leave, &c. *attio non*; because protesting that since the said assignment of the said demised premises in the said declaration mentioned, the said J. C. and S. before the intermarriage of the said J. O. and C. have not wrought, raised, and landed from under and out of the aforesaid premises such quantity of coals as in that breach is mentioned for plea in this behalf, they say that the said J. C. and S. before the intermarriage of the said J. O. and C. have duly accounted for and paid to the said Robert the sum of nine shillings and sixpence of lawful money of Great Britain for all coals sold and shipped, or sent away from the said premises, for each and every wey of coals and culm which has been since the said assignment of the said demised premises wrought, raised, and landed by them the said John, Charlotte, and Sarah, before the intermarriage of the said John O. and Charlotte, or by the said John, John O. and Charlotte and Sarah, since the intermarriage of the said J. O. and C. from under or out of the aforesaid premises, or any part thereof, other than such coals as the said Robert was to have for his own use, as in the said indenture is mentioned, and other than such coals as were therein allowed to be used and burnt at any fire-engine for the draining or working of the said coal-works, and so in proportion and after such rate for any greater or lesser quantity than a wey, every such wey of coals and culm containing twenty-five of the usual carts, being four feet long, two feet broad, and thirteen inches deep, heaped top full, according to the form and effect of the said covenant of the said Channey in that behalf made as aforesaid, that is to say, in the parish of L. aforesaid, and of this they put themselves upon

1st Plea to 1st
Breach, that
nothing of said
rent is in ar-
rear.

2d Plea to 2d
Breach, de-
fendants Smith,
Charlotte and
Sarah, before
said marriage of
John Oliver and
Charlotte, and
said defendants
and John Oliver
since have duly
accounted for
and paid said 9s.
6d. for all coals
sold and shipped
and sent away,
for every wey
raised and landed
by them, except
coals reserved to
plaintiff, or to
be used at any
fire engine for
draining the
work, to in pro-
portion for any
greater or lesser
quantity than a
wey.

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the country, &c.; and the said Robert doth so likewise: And for further plea in this behalf as to the said breach of covenant in the said declaration thirdly above assigned, they the said John, John O. C. and S. by like leave, &c. *actio non*; because they say, that the residue of the term, estate, and interest aforesaid of the said Channey of and in the said demised premises, did not, within three years from the day of the date of the said indenture, come to the said John, Charlotte, and Sarah solely, by assignment thereof, in manner and form as in and by the said third breach of covenant in the said declaration above assigned is supposed; and thus they, &c. are ready to verify; wherefore they pray judgment if, &c.: And for further plea in this behalf as to the said breach of covenant in the said declaration thirdly above assigned, they the said J. J. O. C. and S. by like leave, &c. *actio non*; because they say, that the said J. C. and S. before the intermarriage of the said J. O. and C. and the said John, John O. and C. and S. since the intermarriage of the said J. O. and C. and after the said assignment of the said demised premises in that breach mentioned, and until the end of the said three years from the date of the said indenture, did continue, diligently, at their own proper costs and charges, to try and search for the veins, mines, and seams of coal and culm, in and under the aforesaid premises, and did use their utmost skill to attain and come at the same, and get into working thereof by such pits, engines, devices, and methods as were then usually necessary in such cases, according to the form and effect of the covenant of the said Channey in that behalf made as aforesaid, and of this they, &c. put themselves upon the country; and the said Robert *similiter*: And for further plea as to the said breach of covenant fourthly above assigned, the said J. J. O. C. and S. by like leave, &c. *actio non*; because they say, that the said J. J. O. and C. and S. did, from time to time, and at all times next after the sinking of the said pit in that breach mentioned, duly and constantly, and at all reasonable times during the continuance of the said demise hitherto, effectually work and carry on the due working of the said coal-mines, according to the form and effect of the said covenant of the said Channey in that behalf made as aforesaid; and of this the said J. J. O. and C. and S. put themselves upon the country; said Robert *similiter*: And for further plea in this behalf as to so much of the said supposed breach of covenant in the said declaration fourthly above assigned, as relates to the said J. J. O. and C. and S. not effectually working the said mine in that breach mentioned until the twenty-fifth of May, A. D. 1780, they the said J. J. O. C. and S. by like leave, &c. *actio non*; because they say, that the said J. J. O. C. and S. did, from time to time, and at all times after the said assignment, and after the intermarriage of the said J. O. and C. from the time that the said pit in that breach mentioned was sunk, for a long time then next following, to wit, until and upon the twenty-fifth of May, A. D. 1780, duly, constantly, and at all reasonable times, effectually work and carry on the due working of the said coal mines, according to the

form

4th Plea, to the breach, that the residue of the term, estate, and interest of the said Channey (the lessor) did not come to the said defendants, Smith, Charlotte, and Sarah, solely by assignment thereof in manner aforesaid.

5th Plea, to the breach, said defendants, Smith, Charlotte, and Sarah, before said marriage and said defendants and John Oliver since and after said assignment, and till the end of said three years from the date of said lease, did continue to try for coals, and did use their utmost endeavours to get into working thereof.

6th Plea, to 4th breach, defendants at all times after sinking said pit, did effectually work said coal mines.

7th Plea, to so much of 4th breach as relates to said defendants not effectually working said mine till 25th May 1780, defendant at all times after sinking said pit till said 25th May, did effectually work said coal mines.

form and effect of the said covenant of the said Channey in that behalf made as aforesaid; and of this the said J. J. O. and C. and S. put themselves upon the country, said Robert *similiter*: And for further plea in this behalf as to the residue of the said breach of covenant in the said declaration fourthly above assigned, they the said J. J. O. C. and S. by like leave, &c. *actio non*, because they say, that they the said J. J. O. and C. and S. have from time to time, and at all times hitherto, from the day and year last aforesaid, since the said assignment and intermarriage of the said J. O. and C. have been hindered and prevented from effectually working and carrying on the due work of the said coal mines, during the times last aforesaid by an unavoidable accident, to wit, by certain large quantities of water, which during the time last aforesaid came into, filled and overflowed the said coal mines, and during all that time unavoidably remained and continued therein; and this the said J. J. O. and C. and S. are ready to verify; wherefore they pray judgment if, &c.: And for further plea as to so much of the said breach of covenant fifthly above assigned as relates to the said J. J. O. C. and S. not working, raising, landing, using, selling, and disposing of nine hundred weys of coals from and out of the said premises yearly and every year after the sinking of the said pit and getting of coals, as in that breach is mentioned, until and upon the twenty-fifth of May 1780, they the said J. J. O. and C. and S. by like leave, &c. say *actio non*; because they say, that they the said J. J. O. and C. did yearly and every year, after the said assignment, and after the making of the said pit and getting of coals at that breach mentioned, until and upon the twenty-fifth of May, A. D. 1780, get and raise yearly and every year out of the said premises nine hundred weys of coals, and did well and truly pay and cause to be paid to the said Robert the sum of nine shillings and sixpence of lawful money of Great Britain, for each and every wey of the said coals which the said J. J. O. and C. and S. during the time last aforesaid, get and raise therefrom, according to the form and effect of the said indenture and of the covenant of the said C. so made in that behalf as aforesaid, to wit, at the parish of L. aforesaid; and of this the said J. J. O. and C. and S. also put themselves upon the country *similiter*, &c.: And for further plea in this behalf as to the residue of the said breach of covenant in the said declaration fifthly above assigned, the said J. J. O. and C. and S. by like leave, &c. *actio non*; because they say, that they the said J. J. O. and C. and S. since the said assignment, from time to time, and at all times from the said twenty-fifth of May, A. D. 1780 aforesaid, and since the said pit has been so sunk and coal got at as aforesaid, have been wholly hindered and prevented by an unavoidable accident, to wit, by certain large quantities of water, which during the time last aforesaid came into and overflowed the said coal mines, and during all that time unavoidably remained and continued therein, from having, working, raising, using, selling, and disposing of from and out of the said mines, and unavoidably remaining there, from working and selling any merchantable coal.

said

PERFORMANCE, AND EXCUSE OF PERFORMANCE.

said demised premises any merchantable coal whatsoever; and this they are ready to verify; wherefore they pray judgment if, &c.: 11th Plea, to And for further plea in this behalf as to the said breach of covenant in the said declaration sixthly above assigned, they the said J. J. O. and C. and S. by like leave, &c. *actio non*; because they say, that by a certain *proviso* and clause contained in and being part of the said indenture, and next immediately following and relating to the covenant in the said indenture contained, and in and by the breach of covenant sixthly above assigned supposed to have been broken, it is provided, agreed, and declared, by and between the said parties to the said indenture, that in case, with the using due diligence and proper and effectual methods, there should not be found a sufficient quantity of good and merchantable coal in the premises to work from thence nine hundred weys of coal a year, then and from thenceforth the said Channey, his executors, administrators, and assigns, should stand and be absolutely freed and discharged of and from the covenants in the said indenture contained for the working nine hundred weys of coal a year, and of and from all payments by reason or means of not working such quantities of coal: And the said J. J. O. C. and S. further say, that they the said J. J. O. and C. and S. after the said assignment of the said demised premises, and until the end of the said three years from the date of the said indenture, did diligently, at their own proper costs and charges try and search for the veins, mines, and seams of coal and culm in and under the aforesaid premises, and did use their utmost skill and endeavours to obtain and come at the same and get into working thereof by such pits, engines, devices, and methods as were then usual necessary in such cases, according to the form and effect of the said indenture; but the said J. J. O. and C. and S. further say, that they the said J. J. O. and C. and S. during the said three years, and until and at the end thereof, were hindered and wholly prevented by unavoidable accident from sinking any pit or getting any coal in the said premises, to wit, by divers strata of sand and earth, and by great quantities of water running and flowing into divers pits which they the said J. J. O. and C. and S. attempted and endeavoured to sink in the said premises; and this they, &c. are ready to verify; wherefore, &c.: And for further plea in this behalf as to the said breach of covenant in the declaration seventhly above assigned, they the, &c. by like leave, &c. *actio non*; because they say, that the said J. J. O. and C. and S. since the said assignment of the said demised premises as aforesaid, and since the intermarriage of the said J. O. and C. did, from time to time, and all times during the said demised term, keep all and every the coal which during that time was wrought, raised, and landed from and out of the premises by the said indenture demised, separate, and a part from the coal which they have during that time worked, landed, and raised from and out of the land and premises of other persons, and the same coal so separated and parted did keep and continue so until the same were sold, used, or shipped off, according to the form and effect of the covenant of the said Channey in that behalf made

11th Plea, to
 6th breach, by
 a *proviso* in the
 case it is declar-
 ed, that if due
 diligence and
 proper methods
 used therefor
 not be found
 sufficient good
 and merchant-
 able coal to work
 900 weys a year
 said Channey
 and his assigns
 should be ex-
 charged from
 working the
 900 weys, and
 all payments
 not work-
 same; defend-
 ants, during the
 first three years
 from the date
 the lease, and
 the end thereof
 were hindered
 by unavoidable
 accident from
 sinking any
 and getting
 coal, to wit,
 sand and water
 running and
 flowing into di-
 vers pits which
 they endeavoured
 to sink.

12th Plea,
 7th breach; de-
 fendants have
 kept the coal
 raised on the
 premises sepa-
 rate from coal
 raised by them
 out of other
 lands, until the
 same was sold

13th Plea, to
8th breach, de-
fendants did at
all times, &c.
sell such coal
as was raised,
whenever they
could get a mer-
chantable price.

14th Plea, to
9th breach, de-
fendants did
plant said wag-
gon way with
quick.

15th Plea, to all
the breaches, set
off for money
paid, money
lent, money had
and received.

made as aforesaid, to wit, at the parish of L. aforesaid; and of this the said J. J. O. and C. and S. put themselves upon the country; and the said Robert *similiter*: And for further plea in this behalf as to the said breach of covenant in the said declaration eighthly above assigned, they the said J. J. O. and C. and S. by like leave, &c. say *actio non*; because they say, that the said J. J. O. and C. and S. since the said assignment of the said demised premises as aforesaid, and since the intermarriage of the said J. O. and C. did, from time to time, and at all times thereafter, sell and dispose of all such coal as since that time was wrought, raised, and landed from and out of the said demised premises whenever they could dispose of the same for a merchantable price, according to the form and effect of the said covenant of the said Channey in that behalf made as aforesaid, to wit, at the parish of L. aforesaid; and of this the said J. J. O. and C. and S. put themselves upon the country, &c. and the said Robert doth so likewise, &c.: And for further plea in this behalf as to the breach of covenant in the said declaration ninthly above assigned, they the said J. J. O. and C. and S. by like leave, &c. say *actio non*; because they say, that they the said J. J. O. and C. and S. did, on the day and year in that breach mentioned, at the parish of L. aforesaid, plant the said waggon way in that breach mentioned, and cause the same to be planted on every side well set with quick, according to the form and effect of the said covenant of the said Channey in that behalf made as aforesaid, to wit, at the parish of L. aforesaid; and of this they the said J. J. O. and C. and S. put themselves upon the country; and the said Robert doth so likewise: And for further plea in this behalf as to all the supposed breaches of covenant in the said declaration above assigned, they the said J. J. O. and C. and S. by like leave, &c. say *actio non*; because they say, that the said Robert, before and on the day of exhibiting the bill of the said Robert, at Westminster aforesaid, in the said county of M. was and still is indebted to the said John, John O. and C. and S. in divers sums of money, that is to say, in the sum of two thousand pounds of lawful money of Great Britain, for so much money before that time paid, laid out, and expended by the said J. J. O. C. and S. to and for the use of the said Robert, and at his like instance and request; in the further sum of two thousand pounds, for so much money before that time lent and advanced by the said J. J. O. and C. and S. to the said Robert at his like special instance and request; in the further sum of two thousand pounds of like lawful money, for so much money before that time had and received by the said Robert, at his like instance and request, to and for the use of the said J. J. O. and C. and S. to wit, at Westminster aforesaid, in the said county of M. and which said several sums of money so due, owing, and payable to the said John, J. O. and C. and S. as aforesaid, exceed the said several sums of money due and payable to the said Robert by virtue of the said several supposed breaches of covenant in their plea mentioned, and out of which said last-mentioned several sums of money the said J. J. O. and C. and S. are ready and willing, and hereby offer to set

set off and allow to the said Robert all the money due and owing to him the said Robert by reason of the said several supposed breaches of covenant in this *behalf* mentioned, according to the form of the statute in such case made and provided; and this they are ready to verify; wherefore they pray judgment of, &c.

W. BALDWIN.

And the said Robert, as to the plea of the said John, J. O. and C. and S. by them first above pleaded in bar as to all the said breaches of covenant above assigned, protesting that the same is not sufficient in law to bar the said Robert from having or maintaining his aforesaid action thereof against them, for replication in this behalf says, that he by reason of any thing by that plea alledged, *precludi non*; because he says, that the residue of the term, estate, and interest aforesaid of the said Channey of and in the said demised premises, with the appurtenances, and the liberties, powers, and authorities by the said indenture granted as aforesaid, came to the said John, Charlotte, and Sarah by assignment thereof in manner and form as the said Robert hath in and by the said declaration first above alledged; and this he prays may be enquired of by the country, &c.; and the said John S. John O. Charlotte and Sarah do the like: And the said Robert as to the plea of the said John, J. O. C. and S. by them fourthly above pleaded in bar says, that he by reason of any thing in that plea alledged, *precludi non*; because he says, that the said plea and the matters therein are not sufficient in law to bar the said Robert from having or maintaining his aforesaid action thereof against them; to which said plea in manner and form above pleaded, and the matters therein contained, he the said Robert hath not any need, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf, the said Robert prays judgment and his damages, by reason of the said breach of covenant thirdly above assigned, to be adjudged to him, &c.: And for causes of demurrer in law, the said Robert, according to the statute in that case made and provided, shews to the court here these causes following, that is to say, for that the said John, John O. and C. and S. have in that plea *departed from the allegation* of the said Robert contained in the said breach of covenant, *by inserting the word solely*, and have thereby attempted to *put in issue more than the allegation* contained in the said breach of covenant, to wit, "whether some other person or persons were not joint-tenants or tenants in common of the residue of the said term, estate, and interest, together with the said John, C. and S.;" *whereas by law the said John, John O. C. and S. to have availed themselves of such an objection, ought to have pleaded the same in abatement*, and cannot by law plead the same in bar of the breach of covenant; *and for that the said plea amounts to an admission that the residue of the said term did, within the said three years, by assignment, come to the said John, C. and S. together and along with some other person or persons, which is sufficient to support*

Tenders and replication to the plea, and issue on the traverse.

Demurs to 4th plea.

Causes.

port the said action as to the said breach of covenant, *unless such supposed joint-tenancy or tenancy in common had been pleaded in abatement*; and for that the said plea, if it was meant to be a mere negative of the allegation contained in that behalf in the said declaration of the said Robert, ought to have concluded to the country, and not with a verification; and for that the said plea is multifari-

Replication to plea as to the residue of the 4th breach, that defendants have not been hindered from working the said coal mines in manner, &c.

ous, uncertain, and wants form, &c.: And the said Robert, as to the said plea of the said John, John O. C. and S. by them above pleaded as to the residue of the said breach of covenant in the said declaration fourthly above assigned, says *precludi non*; because he says, that they the said John, John O. C. and S. have not from time to time, and at all times hitherto, from the day and year in that behalf mentioned, since the said assignment, and since the intermarriage of the said J. O. and C. been hindered and prevented from effectually working and carrying on the due working of the coal mines, during the time last aforesaid, by an unavoidable accident in manner and form as in that plea alledged; and thus he

Replication to plea to residue of the 5th breach, that defendants, since pit has been sunk and coal got, have not been hindered by an unavoidable accident from raising and selling any merchantable coal.

prays, &c.; *similiter*: And the said Robert, as to the said plea of the said J. J. O. and C. and S. by them above pleaded to the said residue of the said breach of covenant in the said declaration fifthly above assigned, says, that he by reason of any thing, &c. *precludi non*; because he says, that the said J. J. O. C. and S. since the said assignment, from time to time, and at all times from the said twenty-fifth day of May 1780 aforesaid, and since the said pit has been sunk and coal got at as aforesaid, have not been wholly hindered and prevented by an unavoidable accident from having, working, raising, laming, using, selling, and disposing of, from, and out of the said demised premises any merchantable coal whatsoever, in manner and form as in that plea alledged; and thus the

Replication to plea to 6th breach, that defendants, during said three years, and until and at the end thereof, were not hindered by unavoidable accidents from sinking a pit and getting coal in said premises in manner, &c.

said Robert prays, &c.; *similiter*: And the said Robert as to the said plea of the said J. J. O. C. and S. by them above pleaded in bar as to the said breach of covenant sixthly above assigned, says *precludi non*; because protesting that that plea and the matters therein contained are not sufficient in law to bar the said Robert from having and maintaining his aforesaid action thereof against them, and that he is in no wise bound by the law of the land to answer thereto, protesting also that the said J. J. O. C. and S. after the said assignment of the said demised premises, and until the end of the said three years from the day of the date of the said indenture, did not diligently, at their own proper costs and charges, try and search for the veins, mines, and seams of coal and culm in and under the aforesaid premises, and use their utmost skill and endeavours to attain and come at the same, and get into working thereof by such pits, engines, devices, and methods as were then usual and necessary in such cases, according to the form and effect of the said indenture, and as they have in that plea alledged; nevertheless for replication in this behalf, the said Robert says, that they the said J. J. O. C. and S. during the said three years, and until and at the end thereof, were not hindered and wholly prevented by unavoidable accident from sinking a pit

a pit and getting coal in the said premises, in manner and form as the said J. J. O. and C. and S. have above in that plea alledged; and this, &c. *similiter*. And the said Robert, as to the said plea of the said J. Demurrer to last J. O. and C. and S. by them lastly above pleaded in bar as to all the plea. said breaches of covenant above assigned, says *precludi non*; because he says that the said plea, and the matters therein contained, are not sufficient in law to bar the said Robert from having or maintaining his aforesaid action thereof against them the said J. J. O. and C. and S. which said plea, in manner and form above pleaded, and the matters therein contained, the said Robert hath no need, nor is he bound by the law of the land in any manner to answer; and this the said Robert is ready to verify; wherefore for want of a sufficient plea in this behalf, the said Robert prays judgment and his damages by reason of all the said several breaches of covenant to be adjudged to him, &c. G. Wood.

And the said J. J. O. C. and S. since that they have above in the said plea by them fourthly above pleaded in bar as to the said breach of covenant thirdly above assigned, alledged sufficient matter in law to bar the said Robert from having and maintaining his aforesaid action thereof against them, which they are ready to verify; which same plea, and the matters therein contained, the said Robert hath not denied, nor in anywise answered thereto, but hath hitherto wholly refused to admit the verification thereof; therefore the said J. J. O. C. and S. (as before) pray judgment if the said Robert ought to have or maintain his aforesaid action thereof against them: And the said J. J. O. C. and S. since that they have in their said plea by them lastly above pleaded in bar as to all the breaches of covenant above assigned, alledged sufficient matter in law to bar the said Robert from having or maintaining his aforesaid action thereof against them, which they are ready to verify; which same plea, and the matters therein contained, the said Robert hath not denied, or in anywise answered thereto, but hath wholly refused to admit the verification thereof; therefore the said J. J. O. C. and S. as before pray judgment if the said Robert ought to have or maintain his aforesaid action thereof against them, &c.: But because the court of our said lord the king now here will advise among themselves what judgment to give in the premises, whereon the said parties have put themselves upon the judgment of the court here before they give judgment thereon, a day is therefore given to the parties aforesaid to come before our lord the king at Westminster, on Friday next after the morrow of the Ascension of Our Lord, to hear judgment thereon, because that the court of our said lord the king now here is not yet advised thereof; and as well to try the several issues aforesaid above joined to be tried by the court, as to enquire what damages the said Robert hath sustained on occasion of the premises, whereof the said parties have put themselves upon the judgment of the court, in case judgment shall be thereon given for the said Robert, let a jury come before our lord the king at Westminster, on Monday next

next after the morrow of the Ascension, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

Continuance.

Respite of jurors.

Nisi Prius.

Afterwards the process thereof being continued between the parties aforesaid, of the plea aforesaid, by the jury aforesaid, being respited between them before our lord the king until Wednesday next after eight days of the Holy Trinity, unless the king's right trusty and well-beloved F. Buller, esquire, one of his majesty's justices assigned to hold pleas before the king himself should first come on Tuesday the twenty-fourth of June 1783, at Westminster Hall in the said county, according to the form of the statute in such case lately made and provided for default of the jurors, because none of them did appear; on which day, to wit, on Wednesday next after eight days of the Holy Trinity, before our said lord the king at Westminster, came the parties aforesaid by their attorneys aforesaid, and the said justice before whom the said issue was tried, sent hither his record had in these words, afterwards, that is to say, on the day and at the place within named, before F. Buller, esquire, the justice within named, assigned to hold pleas before the king himself, John Way, gentleman, being associated unto the said justice by force of the statute in such case made and provided, came as well the within R. M. esquire by his attorney within named, as the within mentioned John Smith, John Oliver, and Charlotte his wife, and Sarah Townsend, the defendants, by their attorney within named, and the jurors of the jury, whereof mention is within made, being called and summoned, come, who to speak the truth of the within contents being chosen, tried, and sworn as to the issue within joined, whereof the said parties have put themselves upon the country as to all the supposed breaches of covenant in the within declaration assigned, upon their oath say, that the residue of said term, estate, and interest within mentioned of the within mentioned Charlotte Townsend of and in the within mentioned demised premises, with the appurtenances, liberties, powers, and authorities by the within mentioned indenture granted as within mentioned, did come to the said J. C. and S. by assignment thereof in manner and form as by the said declaration is first within alledged; and as to the issue within joined as to the five pounds seven shillings of the within yearly rent of nine pounds, mentioned in the breach of covenant in the said declaration first within assigned, the jurors aforesaid, upon their oath aforesaid, further say, that nothing of the said rent is in arrear from the said John, John Oliver, and C. and S. to the said Robert in manner and form as the said Robert has in that behalf in the within declaration alledged, and as to the issue within joined as to the breach of covenant in the said declaration secondly within assigned, the jurors aforesaid and John Oliver since have duly accounted for and paid nine shillings and sixpence coals raised from said premises, except those plaintiff was to have for his own use, burnt at any fire-engine for the draining or working of any under coal-works, and so in proportion, &c.

Upon first issue for plaintiff, that the residue of the term came to said defendants, Smith and Charlotte, by assignment.

As to second issue for defendants, that nothing of said rent is in arrear.

As to third issue for defendant, that defendant Smith, C. and S. before the inter-marriage, and said defendants per way for all and such as were in proportion, &c.

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said, upon their oath afore said, further say, that the said John, Charlotte, and S. before the intermarriage of the said J. O. and C. and the said John, J. O. and C. and S. since the intermarriage of the said J. O. and C. had duly accounted for and bid to the said Robert the sum of nine shillings and sixpence of lawful money of Great Britain, for all coals sold and shipped or sent away from the within-mentioned , for each and every wey of coals and culm which had been, since the said assignment of the within-mentioned demised premises, wrought, raised, and landed by them the said J. C. and S. before the intermarriage of the said J. O. and C. or by the said J. J. O. and C. and S. since the intermarriage of the said J. O. and C. from, under, and out of the within-mentioned premises, or any part thereof, other than such coals as the said Robert was to have for his own use, as in the within indenture is mentioned, and other than such coals as were therein allowed to be used and burnt at any fire-engine for the draining or working of any coal works, and so in proportion and after that rate for any greater or lesser quantity than a wey (every such wey of coals or culm containing, &c.) according to the form and effect of the said covenant of the said C. in that behalf made as within-mentioned, and as the said John, John Oliver, C. and S. have in pleading in that behalf within alledged; and as to the issue within joined, whereof the said parties have also put themselves upon the country, as to the breach of covenant in the said declaration thirdly within assigned, the jurors afore said, upon their oath afore said, further say, that the said J. C. and S. before, &c. and the said John, John Oliver, C. and S. since, &c. after the within assignment, the within mentioned demised premises in that breach mentioned, and until the end of the within-mentioned three years from the date of the within indenture, did continue diligently, at their own proper costs and charges, to try and search for the veins, mines, and seams of coal and culm in and under the afore said premises, and did use their utmost skill and endeavours to attain and come at the same, and get into working thereof by such pits, engines, devices and methods as were then usual and necessary in such cases, according to the form and effect of the said covenant of the said C. in that behalf made as within mentioned, in manner and form as the said John, John Oliver, C. and S. have in pleading in that behalf within alledged; and as to the issue within joined as to the whole breach of covenant fourthly within assigned, the jurors afore said, upon their oath afore said, further say, that the said John, John Oliver, C. and S. did not, from time to time, and at all times meet after the sinking of the pit in that breach mentioned, duly and constantly, and at all seasonable times during the continuance of the said demise, and until the time of the exhibiting of the within-mentioned bill of the said Robert, effectually work and carry on the due working of the said coal mines, according to the form and effect of the said covenant of the said C. in that behalf made as

As to 4th issue for defendant that defendant Smith, C. and before the intermarriage, and said defendant and John Oliver since until the end of the years from the date of the lease did continue to try for coals, and did use their most endeavours to come at the same, and get into work thereof.

As to 5th issue for plaintiff, the defendant has not, at all seasonable times during the continuance of the said lease, worked said coal mines.

As to 6th issue for defendant, that from the time said pit was sunk until twenty-fifth of May 1780, they did at all reasonable times work said mines.

As to 7th issue for plaintiff, that defendants have not been prevented from working said coal mines by an unavoidable accident.

As to 8th issue for defendant, that defendant did yearly, after sinking said pits, and getting at coals, until twenty-fifth of May 1780, raise yearly nine weys, and pay plaintiff ss. 6d. for each

within mentioned, in manner and form as the said J. J. Oliver, Charlotte, and S. have in pleading in that behalf within alledged; and as to the issue within joined as to so much of the within supposed breach of covenant in the said declaration fourthly within assigned, as relates to the said J. J. O. C. and S. not effectually working the said mine in that breach mentioned, until twenty-fifth of May A. D. 1780, the jurors aforesaid, upon their oath aforesaid, further say, that the said J. J. O. C. and S. did from time to time, and at all times after the said assignment, and after the intermarriage of the said J. O. and C. from the time that the said pit in that breach mentioned, was sunk for a long time then next following, to wit, until and upon the twenty-fifth of May, A. D. 1780, duly, constantly, and at all reasonable times effectually work and carry on the due working of the within-mentioned coal mines, according to the form and effect of the said covenant of the said C. in that behalf made as aforesaid within-mentioned, in manner and form as the said John, John Oliver, and C. and S. have in pleading in that behalf within alledged; and as to the issue within joined as to the residue of the within breach of covenant in the said declaration fourthly within assigned, the jurors aforesaid, upon their oaths aforesaid, further say, that the said John, John Oliver, C. and S. have not, from time to time, and at all times until the day of exhibiting the said bill of the said Robert from the day and year in the plea of the said John, John Oliver, C. and S. by them as within pleaded as to the residue of the same breach of covenant within mentioned since the said assignment, and since the intermarriage of the said J. O. and C. being hindered and prevented from effectually working and carrying on the due working of the said coal mines during the time last aforesaid, by an unavoidable accident, in manner and form as in that plea is alledged; and as to the issue within joined to so much of the breach of covenant fifthly within assigned, as relates to the said J. J. O. C. and S. not working, raising, landing, using, selling, and disposing of nine hundred weys of coal from and out of the within mentioned premises, yearly and every year after the sinking of the within mentioned pit, and getting at coals as in that breach is mentioned, until and upon the twenty-fifth of May 1780, the jurors aforesaid, upon their oath aforesaid, further say, that the said J. J. O. C. and S. did yearly and every year after the said assignment, and after the making of the said pit and getting at coals in that breach mentioned, until and upon the twenty-fifth of May 1780, get and raise yearly and every year out of the within-mentioned premises, nine hundred weys of coal, and did well and truly pay, and cause to be paid to the said Robert the sum of nine shillings and sixpence for each and every wey of the said coals which the said J. J. O. and C. and S. during the time last aforesaid got and raised therefrom, according to the form and effect of the said indenture, and of the covenant of the said C. is made in that behalf as within mentioned, in manner and form

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as the said J. J. O. C. and S. have in pleading in that behalf within alledged; and as to the issue within joined as to the residue of the said breach of covenant in the said declaration fifthly within assigned, the jurors aforesaid, upon their oaths aforesaid, further say, that the said J. J. O. C. and S. since the said assignment from time to time, and at all times from the twenty-fifth of May, A. D. 1800 aforesaid, and since the said pit has been sunk, and coal got at as within mentioned, until the time of the exhibiting of the within-mentioned bill of the said Robert, have not been hindered and prevented by an unavoidable accident from having, working, raising, landing, using, selling, and disposing of, from, and out of the said demised premises merchantable coal in manner and form as they have in pleading in that behalf within alledged; and as to the issue within joined as to the breach of covenant sixthly within assigned, the jurors aforesaid, upon their oath aforesaid, further say, that the said J. J. O. C. and S. during the within-mentioned three years, and until and at the end thereof, were hindered and wholly prevented by unavoidable accident from sinking a pit and getting coals in the said premises, in manner and form as the said J. J. O. C. and S. have within in pleading in that behalf alledged; and as to the issue within joined as to breach of covenant in the said declaration seventhly within assigned, the jurors aforesaid, upon their oaths aforesaid, further say, that the said J. J. O. C. and S. since the said assignment of the said demised premises as within mentioned, and since the intermarriage of the said J. O. and C. did from time to time, and at all times during the said demised term, keep all and singular the coal which during that time was wrought, raised, and landed from and out of the premises by the said indenture demised, separately, and apart from the coal which they have during that time worked, landed, and raised from and out of the land and premises of other persons, and the same coal so separated and parted, did keep and continue so until the same were sold, used, or shipped off, according to the form and effect of the covenant of the said C. in that behalf within alledged; and as to the issue within joined as to the breach of covenant in the said declaration eighthly within assigned, the jurors aforesaid, upon their oath aforesaid, further say, that the said J. J. O. C. and S. since the assignment of the said demised premises as within mentioned, and since the intermarriage of the said J. O. and C. did from time to time, and at all times thereafter, sell and dispose of all such coal as since that time was wrought, raised, and landed from and out of the said demised premises whenever they could dispose of the same, for a merchantable price, according to the form and effect of the said covenant of the said C. in that behalf made as within mentioned, in manner and form as they have in pleading in that behalf within alledged; and as to the issue within joined as to the breach of covenant in the said declaration ninthly within assigned,

As to 9th for plaintiff, defendants, said twenty of May, have been prevented from raising by an unavoidable accident

As to 10th for defendant, that during within-mentioned three years, and until and at the end thereof, defendants were hindered by unavoidable accident from sinking a pit, getting coal. As to 11th for defendant, that they kept the coal raised on premises separate from coal raised on other lands.

As to 12th for defendant, that they at all times the coal whenever they could for a merchantable

As to 13th for defendant, that they

plant the said waggon-way
the

the jurors aforesaid, upon their oath aforesaid, further say, that the said J. J. O. and C. and S. did plant the said waggon way in that breach mentioned, and cause the same to be planted on every side, and well set with quick, according to the form and effect of the said covenant of the said C. in that behalf made as within mentioned, in manner and form as they have in pleading in that behalf within alledged; and the jurors aforesaid, as to the damages of the said Robert, by reason of the said respective residue of the said fourth and fifth breaches of covenant within mentioned, over and above his costs and charges by him about his suit in that behalf expended, amount to four hundred and twenty-seven pounds ten shillings; and for those costs and charges to forty shillings; and now also at this day, that is to say, on Wednesday next after eight days of the Holy Trinity, of the premises, as to the said plea of the said J. J. O. C. and S. by them fourthly above pleaded in bar, as to the said breach of covenant thirdly above assigned, whereupon the said parties have put themselves upon the judgment of the court, being seen, and by the court of our lord the king now here fully understood, it appears that the court of our lord the king now here, that the said plea, and the matters therein are not sufficient in law to bar the said Robert from having or maintaining his aforesaid action thereof against them; and the premises, as to the said plea of the said J. J. O. C. and S. by them lastly above pleaded in bar, as to all the said breaches of covenant above assigned, whereupon the said parties have also for themselves, upon the said judgment of the court being seen, and by the court of our said lord the king now here fully understood, it appears to the said court of our said lord the king now here, that the same plea, and the matters therein contained are not sufficient in law to bar the said Robert from having or maintaining his aforesaid action against them; therefore it is considered by the court here, that the said Robert recover against the said J. J. O. C. and S. his damages aforesaid, by the jury aforesaid, in form aforesaid assigned, and also one hundred and eighty pounds ten shillings for his costs and charges by the court of our said lord the king now here, adjudged of increase to the said Robert by his agent, which said damages in the whole amount to six hundred and ten pounds; and the said J. J. O. and C. and S. in mercy, &c.

Damages by reason of the respective residue of 4th and 5th breaches of covenant 427l. 10s. Costs 40s.

As to 1st issue in law, defendant's plea is not sufficient.

To 2d issue in law, that defendant's plea is not sufficient.

Judgment.

Cost of increase.

Mercy.

Afterwards, to wit, on Thursday, thirteenth of November, in the twenty-fourth year of the reign of our sovereign lord George the Third, &c. a transcript of the said record and process between the parties aforesaid of the plea aforesaid, with all things touching the same, on pretence of prosecuting a certain writ of error in the premises, J. J. O. C. and S. before the justices of our lord the king of the common bench, and barons of the exchequer, of the degree of the coif now transmitted from the court of our said lord the king into the exchequer chamber, according to the form of the statute made in the parliament of our lady Elizabeth, late queen

queen of England, held at Westminster, the twenty-third of November, in the twenty-seventh year of her reign, and the aforesaid J. J. O. C. and S. appearing in the same court of exchequer chamber, assigned a certain matter for error in the record and process aforesaid, for revoking and annulling the process aforesaid, to which the aforesaid Robert likewise appearing in the same court of exchequer chamber, pleaded that there was not any error in the record and process aforesaid, or in giving the said judgment, and afterwards, to wit, on Tuesday the tenth of November, in the twenty-fifth year of the reign of our said lord the now king, the said court of exchequer having seen, and diligently examined, and fully understood as well the record and process aforesaid, and the judgment thereupon given as the said cause assigned and alleged for error by the said J. J. O. and C. and S. it appeared unto the said court of exchequer chamber that judgment aforesaid was in no way erroneous or defective, and that there was no error in the said record; therefore it was then and there considered by the said court of exchequer chamber, that the said judgment should be in all things affirmed, and should stand in full force and effect, notwithstanding the said cause and matter assigned for error by the said J. J. O. and C. and S.; and it was also at the same time considered by the same court, that the said Robert should recover against the said J. J. O. and C. and S. one hundred and four pounds ten shillings, adjudged to the said Robert by his own assent, according to the form of the statute in such case made and provided, for his damages, costs, and charges which he had sustained by reason of the delay of execution of the said indenture, on pretence of prosecuting the said writ of error; and thereupon the said record, and also the proceedings of the justices of the common bench, and barons of the exchequer, as to barring of the execution aforesaid before them had in the premises, were then remitted by the said justices and barons before our said lord the king, wheresoever he then was in England, according to the form of the statute above mentioned, and they now remain here in the court of our said lord the king, before the king himself, &c.

Judgment for damages for delay of execution of said judgment. The record and proceedings were remitted in K. B.

And afterwards, on Saturday twenty-second of May, in the twenty-fourth year of the reign of our sovereign lord George the Third, &c. before the said justices of the common bench and barons of the exchequer, came the aforesaid J. J. O. and C. and S. by D. J. their attorney, and lay, that in the record of proceedings aforesaid, and also in giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the declaration aforesaid, and the matters therein contained are not sufficient in law for the said R. M. to have or maintain his action thereof against the said J. J. O. C. and S.; there is also error in this, that though it appears by the record aforesaid that the covenants upon which breaches have been fourthly and seventhly assigned in the said declaration, were not to attach or become binding upon the said C. T. his executors,

Assignment of errors in the exchequer chamber.

COVENANT.—BY REVERSIONER

administrators or assigns, unless the said C. J. his executors, administrators or assigns, could get into working of the said veins, mines, and seams of coal and culm, within three years from the day of the date of the said indenture in the said declaration in part recited, by such pits, engines, devices and methods, as were or should be usual and necessary in such case, and although it does not appear in or by the said declaration, that the said C. T. deceased did or could get into working thereof during any part of the said three years, before the said assignment of the said premises in the said record mentioned, and although it appears by the record aforesaid, that the jury aforesaid, have by their verdict against him, found that the said J. J. O. C. and S. before the intermarriage of the said J. O. and C. and the said J. J. O. C. and S. since the intermarriage of the said J. O. and C. after the said assignment of the said demised premises, and until the end of the said three years from the date of the said indenture, did continue diligently, at their own proper costs and charges, to try and search for the veins, mines, and seams of coal and culm in and under the said premises, and did use their utmost skill and endeavours to attain and come at the same, and get into the working thereof by such pits, engines, devices, and methods as were then usual and necessary in such cases; and although it appears in and by the said record, that the jury have found by the verdict aforesaid, that the said J. O. C. and S. during the said three years, and until and at the end thereof, were hindered and prevented by unavoidable accidents from sinking a pit and getting coals in the said premises; yet nevertheless judgment hath been given for the said R. M. against the said J. S. J. O. C. and S. for part of the breach of covenant fourthly above assigned in the said declaration; and also for part of the breach of covenant fifthly above assigned; there is also error in this, that by the said record it appears that the judgment aforesaid given in form aforesaid was given for the said R. M. against the said J. S. J. O. C. and S. when by the laws of the land judgment ought to have been given for the said J. S. J. O. C. and S. against the said Robert; wherefore they that for the errors assigned, and others appearing upon the said record, the judgment aforesaid may be reversed, annulled, and made void, and that the said J. S. J. O. C. and S. may be restored to all things which they have lost by the judgment aforesaid.

The defendant joined in the common joinder in *nullo est erratum*.

Declaration by
assignees of a
bankrupt, for
having the re-
version of a term
against the as-
signee of the
for and.

MIDDLESEX, to wit. Harvey Christian Coombe, and William Gosling, assignees of the estate and effects of John Hickinbottom, a bankrupt, within the true intent and meaning of the several statutes made and now in force concerning bankrupts, or some or one of them, complain of Edward Pain, assignee of the said John Hickinbottom, being in the custody of the marshal

marshal of the marshalsea of our lord the now king, before the king himself, in a plea of breach of covenant; for that whereas before and at the time of making the indenture of lease hereafter mentioned to have been made by the said John, he the said John was possessed of the premises thereby demised for a certain term, to wit, a term of twenty-one years, commencing from the feast-day of St. Michael the Archangel, in the year of Our Lord 1788, under and by virtue of a certain demise thereof theretofore made to the said John, to wit, at Westminster aforesaid, and being so possessed thereof, he the said John before he became bankrupt heretofore, to wit, *on the twenty-sixth day of November, in the year of Our Lord 1788*, to wit, at Westminster, in the county of Middlesex, by a certain indenture then and there made, between the said John of the one part, and one Richard Rudder of the other part (the counterpart of which said indenture, sealed with the seal of the said Richard Rudder, the said Harvey Christian and William, assignees as aforesaid, now bring into court here, the date whereof is the day and year aforesaid), for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said Richard Rudder, his executors, administrators, and assigns, all that messuage or tenement situate, standing, and being on the north side of Piccadilly, in the parish of St. James's, Westminster, formerly in the tenure or occupation of James Nicolson, then late of John Moon, spur-maker, and then of the said John Hickinbottom, and commonly distinguished and known by No. 18, and also all that warehouse at the back of said messuage or tenement, situate on the south-side of Castle-street, then added to and used therewith, and then in the tenure or occupation of the said John Hickinbottom, together with all outhouses, offices, yards, cellars, chambers, rooms, garrets, lights, ways, passages, waters, water-courses, liberties, easements, profits, privileges, commodities, and advantages whatsoever to the said messuage or tenement, and premises belonging, or in anywise appertaining, to hold the said messuage or tenement, and all and singular other the premises therein before mentioned, and intended to be thereby demised, with their and every of their appurtenances, unto the said Richard Rudder, his executors, administrators, and assigns, from the feast-day of St. Michael the Archangel, then last past, for and during and unto the full end and term of twenty-one years, wanting seven days, from thence next ensuing, and fully to be complete and ended; yielding and paying therefore yearly, and every year during the said term of twenty-one years, wanting seven days, thereby granted unto the said John Hickinbottom, his executors, administrators, or assigns, during the said term, the yearly rent or sum of *eighty pounds* of lawful money of Great Britain, free and clear of and from all levies, taxes, and impositions whatsoever then or thereafter to be imposed or taxed upon the said demised premises, or any part thereof, by authority of parliament, or otherwise howsoever, (the land-tax or king's tax excepted), on the four most usual feasts or days of pay-

The date of the lease.

ment of rent in the year (that is to say), the feast-days of the Birth of Our Lord Christ, the Annunciation of the Blessed Virgin Mary, St. John the Baptist, and St. Michael the Archangel, in every year by even and equal portions, the first payment thereof to begin and be made on the feast-day of the Birth of Our Lord Christ then next ensuing; and the said Richard Rudder for himself, his executors, administrators, and assigns, did, by the said indenture, covenant, promise, and agree to and with the said John Hickinbottom, his executors, administrators, and assigns, in manner following, that was and is to say, that he the said Richard Rudder, his executors, administrators, or assigns should and would yearly, and every year during the said term thereby demised, well and truly pay, or cause to be paid unto the said John Hickinbottom, his executors, administrators, or assigns, the said yearly rent or sum of eighty pounds therein above reserved, clear of all deductions whatsoever (except the land or king's tax as aforesaid) upon the several days or times, and in manner therein before mentioned and appointed for payment thereof, according to the true intent and meaning of the said indenture, as by the said indenture, relation being thereunto had (amongst other things) more fully appears; by virtue of which said demise the said Richard Rudder entered into the said demised premises, with the appurtenances, and was possessed thereof, the reversion thereof belonging to the said John Hickinbottom; and the said Harvey Christian and William, assignees as aforesaid, in fact say, that afterwards, and during the continuance of the said term, to wit, on the twenty fifth day of December, in the year of Our Lord 1794, the said demised premises, and the estate and interest of the said John Hickinbottom, of and in the residue of the said term of twenty-one years, wanting seven days, of and in the said demised premises, came to and vested in the said Edward by assignment, to wit, at Westminster aforesaid, by means whereof the said Edward afterwards, to wit, on the day and year aforesaid, entered into the said demised premises, with the appurtenances, and became and was continually from thence until and upon the feast day of the Birth of Our Lord Christ, in the year of Our Lord 1796, was possessed thereof, and the said term is still subsisting, the reversion thereof, expectant on the determination of the said demise, belong to the said Harvey Christian and William as such assignee as aforesaid; and although the said John Hickinbottom, before he became bankrupt, and the said Harvey Christian and William, assignees as aforesaid, since they became such assignees, have always from the time of the making of the said indenture, hitherto respectively well and truly kept, performed, and fulfilled all and singular the covenants and agreements in the said indenture contained, on the parts and behalf of the said John and his assigns to be kept, performed, and fulfilled, according to the form and effect of the said indenture; yet protesting that the said Edward hath not performed, fulfilled, or kept any thing in the said indenture contained on the part and behalf of the said Richard Rudder and his assigns to be kept, performed,

and fulfilled, the said Harvey Christian and William, assignees as aforesaid, in fact says, that after the said term of years so came to the said Edward by assignment as aforesaid, that one hundred and sixty pounds of the rent aforesaid for two years of the said term, ending on the feast-day of the Birth of Our Lord Christ, in the year of Our Lord 1796, on that day in that year, to wit, at Westminster aforesaid, became due and owing from the said Edward to the said Harvey Christian and William, as such assignees as aforesaid, and which the said Edward ought to have paid to them, but hath not yet paid; but to pay which to the said Harvey Christian and William, the said Edward hath hitherto wholly refused, and still doth refuse, contrary to the form and effect of the said indenture of lease, and of the covenant of the said Richard Rudder, for himself and his assigns, with the said John Hickinbottom, for himself and his assigns, in that behalf made as aforesaid, to wit, at Westminster aforesaid, and to the said Harvey Christian and William, assignees as aforesaid say, that the said Edward, (although often requested) hath not kept the said covenant to make by the said Richard Rudder, for himself and his assigns, with the said John Hickinbottom and his assigns, but hath broken the same, and to keep the same with the said Harvey Christian and William, assignees as aforesaid, hath hitherto wholly refused, and still refuses to do so, to wit, at Westminster aforesaid, to the damage of the said Harvey Christian and William, assignees as aforesaid, of three hundred pounds; and therefore they bring their suit, &c.

T. BARROW.

WHEREAS by a certain indenture, bearing date the day and year aforesaid, and sealed as well with the seal of the said George, as with that of the said Richmond Webb, the said William now brings here into court, the said William Stokes and Richmond Webb, for the considerations therein mentioned, did, according to their respective estates and interests, demise, lease, and confirm to the said George, a certain messuage or dwelling house, stable, coach-house, garden, yards, warehouse, and premises in the said indenture more particularly mentioned and described, with the appurtenances, to hold the same to the said George from the twentieth of September, then last past, for and during, and unto the full end and term of eleven years from thence next ensuing, and fully to be complete and ended, yielding and paying yearly, and every year during the said term thereby demised unto the said W. S. his executors, administrators, or assigns, the yearly rent or sum of two hundred pounds of lawful money of Great Britain, clear of all taxes, except the land-tax, by four even and equal quarterly payments, that is to say, the feast of the Nativity of Our Lord Christ, the feast of the Annunciation of the Blessed Virgin Mary, the feast of St. John the Baptist, and the feast of St. Michael the Archangel, the first payment to be made on the feast of the Nativity of Our Lord Christ next ensuing the day of the date of the said

Declaration
against assignees
of lease for not
repairing.

said indenture; and the said G. did covenant, promise, and agree to and with the said William by the said indenture (amongst other things), that he the said G. his executors, administrators, or assigns, would well and truly pay, or cause to be paid, unto the said W. his executors, administrators, or assigns, during the said term thereby demised, the said yearly rent or sum of two hundred pounds, clear of all taxes, charges, rates, assessments, and impositions whatsoever (save the land-tax), on the days and times, and in the manner and proportions therein before limited and appointed for the payment thereof, and also would for his and their own costs and charges during the said term thereby demised, well and sufficiently repair, amend, and keep the said premises thereby demised, and every part thereof, except the foundation of the walls of the said several warehouses thereby demised, facing and standing towards the river Lea, in all and manner of needful and necessary reparations and amendments whatsoever, when and so often as need or occasion should be or require, and the said premises being so well and sufficiently repaired, amended, and kept, would, at the end, expiration, or other sooner determination of that demise, which should first happen, peaceably and quietly surrender and yield up unto the said William, his executors, administrators, or assigns, the wear and waste of time, and accident of fire only excepted, as by the said indenture, reference being thereto had, will (amongst other things) more fully appear: And the said William further says, that the said G. by virtue of the said indenture, after the making thereof, to wit, on the day and year aforesaid, entered into the said demised premises, with the appurtenances, and became and was, and from thence hitherto hath been, and still is thereof possessed for the said term to him thereof granted as aforesaid, and although all and singular the covenants, clauses, or agreements in the said indenture contained on the part and behalf of the lessors, have always from the time of the making thereof, hitherto been well and truly performed, fulfilled, and kept; yet protesting that the said G. hath not performed, fulfilled, or kept any of the covenants, clauses, or agreements in the said indenture contained, on his part and behalf to be performed and fulfilled, according to the tenor and effect thereof; the said William in fact saith, that after the making of the said indenture, and during the said term thereby granted, to wit, on the feast of St. Michael the Archangel, in the year of Our Lord 1789, at Westminster aforesaid, a certain large sum of money, to wit, the sum of five hundred and fifty pounds of the rent aforesaid, for two years, and three quarters of another year of the said term then elapsed, became due and owing from the said G. to the said William, by virtue of and according to the form and effect of the said indenture, and of the covenant of the said G. so by him made with the said William in that behalf as aforesaid, and still remains wholly in arrear and unpaid, contrary to the form and effect of the said indenture, and of the said covenant so made by the said G. with the said William in that behalf as aforesaid: And the said William in fact further says, that the said G. did not, nor would at his own costs and charges during

during the said term, by the said indenture granted, well and sufficiently repair, amend, and keep the said premises thereby demised, and every part thereof, except as in the said indenture is excepted, in all and all manner of needful and necessary reparations and amendments whatsoever, as often as need or occasion required, but on the contrary thereof, the said G. after the making of the said indenture, and during the said term thereby granted, to wit, on the first day of August, in the year 1789 aforesaid, at Westminster aforesaid, and from thence hitherto suffered and permitted the said demised premises, with the appurtenances, to be greatly out of repair, ruinous, and in decay, for want of necessary repairing, amending, and keeping thereof, in other and different parts and places than the foundation of the walls to the said warehouse facing and fronting towards the said river Lea, that is to say, in the roof, tiling, joists, rafters, beams, timbers, walls, plastering, wainscot floors, gates, windows, window frames, pallisadoes, pales, fences, pavements, leads, linings, gutters, and drains thereof, and in various other parts and particulars thereof, contrary to the form and effect of the said indenture, and of the covenant to made by the said G. with the said William in that behalf as aforesaid: And so the said William says, that the said G. although often requested, &c. hath not kept the said covenant so by him made with the said William in manner and form aforesaid, but hath broken the same, and to keep the same with the said William hath hitherto wholly refused, and still refuses, to the damage of the said William of three hundred pounds; and therefore he brings suit, &c.

S. MARRYAT.

And the said George, by Evan Bethel Lloyd, his attorney, *in Plea, Non est* comes and defends the wrong and injury, when, &c. and saith *factum* that the said indenture in the said declaration mentioned is not his deed, and of this he puts himself upon the country: And for a 2d Plea, that the said G. by leave of the court here, the respective defendants in that purpose first had and obtained, according to the form of the statute in such case made and provided, saith, that the said William ought not to have or maintain his aforesaid action thereof against him, because he says, that the said Richmond Webb before and at the time of making the said indenture in the said declaration mentioned, was lawfully possessed of the premises thereby demised, with the appurtenances, for the residue then to come and unexpired of a certain term of ninety-nine years, commencing on the twenty-fourth day of June, in the year of Our Lord 1770, subject to an equity of redemption thereof by the said William on payment of a certain sum of money, with interest thereon, to the said Richmond Webb, and that the said several covenants in the said declaration mentioned were and each of them was made by the said G. with the said William as aforesaid, in respect of the said several and respective estates and interests of the said William and Richard Webb, or one of them, in the said demised premises, with the appurtenances, and not otherwise: and

COVENANT.—PLEA IN DISCHARGE.

and the said G. further says, that one George Medley before and at the time of making the said indenture, and from thence until and at the time of making the indenture hereafter next mentioned, was seised of the reversion of and in the said demised premises, with the appurtenances, expectant on the determination of the said term of ninety-nine years, in his demesne as of fee, and being so seised thereof after the making of the said first-mentioned indenture, and during the term thereby granted, to wit, on the twenty-third day of March, in the year of Our Lord 1781, at Westminster aforesaid, by a certain indenture of bargain and sale then and there made between the said G. Medley of the one part, and the said William and one Morgan Thomas of the other part, the said G. Medley for the considerations therein mentioned, bargained and sold to the said William and Morgan Thomas his said reversion of and in the said demised premises, with the appurtenances, expectant on the determination of the said term of ninety-nine years; to hold the same unto the said William and Morgan Thomas, their executors, administrators, and assigns, from the day next before the date of the said indenture, for the term of one whole year from thence next ensue, and fully to be complete and ended, by virtue of which said last-mentioned indenture, and by force of the statute for transferring uses into possession, the said William and Morgan Thomas became and were possessed of the said last-mentioned reversion of and in the said demised premises, with the appurtenances, for the said term of one year to them thereof granted as aforesaid, the further reversion thereof, with the appurtenances, after the expiration of the said last-mentioned term belonging to said George Medley, his heirs, and assigns in manner aforesaid; and the said William and Morgan Thomas being so possessed of such reversion of and in the said demised premises, with the appurtenances, so bargained and sold to them as aforesaid, and the further reversion thereof, with the appurtenances belonging as aforesaid, afterwards to wit, on the twenty-fourth day of March in the year last aforesaid, at Westminster aforesaid, by a certain indenture of release then and there made between the said G. M. of the one part, and the said William and Morgan Thomas of the other part, the said G. M. for the considerations therein mentioned, granted and released to the said William and Morgan Thomas the said last-mentioned reversion of and in the said demised premises, with the appurtenances, to hold the same unto the said William and Morgan Thomas, their heirs, and assigns, to the use of the said William and Morgan Thomas, and the heirs and assigns of the said William, in trust, as to the estate and interest of the said Morgan Thomas, for the said William, his heirs, and assigns, by virtue of which said last-mentioned indenture, and by force of the statute for transferring uses into possession, the said William and Morgan Thomas became and were seised of the said last-mentioned reversion of and in the said demised premises, with their appurtenances, in their demesne as of fee in manner aforesaid, and being so thereof seised afterwards, to wit, on the twenty-sixth day of March in the year last aforesaid,

aforesaid, at Westminster aforesaid, by a certain other indenture of bargain and sale then and there made between the said William and Morgan Thomas of the one part, and one William Makepeace Thackeray of the other part, the said William Stokes and Morgan Thomas, for the considerations therein mentioned, bargained and sold to the said William Makepeace Thackeray the said last-mentioned reversion of and in the said demised premises, with the appurtenances, to hold the same unto the said William Makepeace Thackeray, his executors, administrators, and assigns, from the day next before the day of the date of the said last-mentioned indenture for the term of one whole year from thence next ensuing, and fully to be complete and ended, by virtue of which said last-mentioned indenture, and by force of the statute for transferring uses into possession, the said William Makepeace Thackeray became and was possessed of the said last-mentioned reversion of and in the said demised premises, with the appurtenances, for the said term of one whole year to him thereof granted as aforesaid, the further reversion thereof, with the appurtenances, after the expiration of the said last-mentioned term belonging to the said William Stokes and Morgan Thomas, their heirs, and assigns in manner aforesaid; and the said William Makepeace Thackeray being so possessed of such reversion of the said demised premises so bargained and sold to him as aforesaid, and the further reversion thereof, with the appurtenances belonging as last aforesaid, afterwards, to wit, on the twenty-seventh day of March, in the year last aforesaid, at Westminster aforesaid, by a certain other indenture of release then and there made between the said William Stokes and Morgan Thomas of the first part, the said Richmond Webb of the second part, and the said William Makepeace Thackeray of the third part, for the considerations therein mentioned, the said Morgan Thomas, at the request and by the direction and appointment of the said William Stokes, and at the nomination of the said Richard Webb released, and the said William Stokes released, ratified, and confirmed to the said William Makepeace Thackeray the said last-mentioned reversion of and in the said demised premises, with the appurtenances, to hold the same unto and to the use of the said W. M. Thackeray, his heirs, and assigns, in trust for the said Richard Webb, his heirs, and assigns, subject to a proviso or condition in the said last-mentioned indenture contained, for redemption of the same premises, on payment by the said William S. to the said Richmond Webb, his executors, administrators or assigns, of a certain large sum of money and interest at a day in the same indenture mentioned, and long since past, by virtue of which said last mentioned indenture, and by force of the statute for transferring uses into possession, the said W. M. Thackeray became and was seised of the said last-mentioned reversion of and in the said demised premises, with the appurtenances, in his demesne as of fee in manner and upon the trust aforesaid: And the said George further saith, that after the making of the said first-mentioned indenture, and during the term thereby granted,

he the said George being so possessed of the said demised premises, with the appurtenances, for the said term of eleven years, and the reversion of the same for the then residue of the said term of ninety-nine years, and also the said further reversion thereof, respectively belonging as last aforesaid, subject to such equity of redemption by the said William Stokes as aforesaid, to wit, on the thirtieth of May, A. D. 1785, at Westminster aforesaid, the said R. W. departed this life, having first duly made his last will and testament in writing, and thereby given and bequeathed all his worldly estate and effects to one Sarah Webb, and appointed the said S. W. sole executrix of his said will, and that the said S. W. after the death of the said Richmond W. duly proved his said will in the prerogative court of the archbishop of Canterbury, and having taken upon herself the burthen of the execution thereof, assented to the said bequest, and claimed to have the said reversion of and in the said demised premises, with the appurtenances, for the then residue of the said term of ninety-nine years (subject to such equity of redemption by the said William S. as aforesaid), and the money thereupon secured to the said Richmond Webb in his lifetime as aforesaid, as legatee thereof, under and by virtue of the said will, to wit, at Westminster aforesaid, and by virtue of such bequest, assent, and claim, the said Sarah Webb became and was possessed of the said reversion of and in the said demised premises, with the appurtenances, for the then residue of the said term of ninety-nine years, the further reversion thereof belonging to the said W. M. Thackeray, his heirs and assigns, in manner and upon the trust aforesaid; and the said respective reversions being subject to such equity and redemption by the said W. S. as aforesaid: And the said George further says, that after the making the said first-mentioned indenture, and during the term thereby granted, he the said George being so possessed of the said demised premises, with the appurtenances, for the said term of eleven years, and the reversion of the same, for the then residue of the said term of ninety-nine years, and also the said further reversion thereof respectively belonging as last aforesaid, subject to such equity of redemption as aforesaid, to wit, on the twelfth of February, A. D. 1787, at Westminster aforesaid by a certain other indenture of bargain and sale then and there made between the said W. M. Thackeray and William S. of the one part, and the said S. W. of the other part, the said W. M. T. and W. S. for the considerations therein mentioned, according to their respective estates and interests therein, purchased, sold, and confirmed to the said S. Webb the said last-mentioned reversion of and in the said demised premises, with the appurtenances, to hold the same to the said S. Webb, her executor, administrators, and assigns, from the day next before the date of the said last-mentioned indenture, for the term of one whole year then next ensuing and fully to be complete and ended; by virtue of which said last-mentioned indenture, and by force of the statute for transferring uses into possession, the said S. Webb became and was possessed of the said last-mentioned reversion of

and in the said demised premises, with the appurtenances, for the said term of one year so to her thereof granted as aforesaid, the further reversion thereof, with the appurtenances, after the expiration of the said last-mentioned term belonging to the said W. M. T. his heirs and assigns, in manner and upon the trust aforesaid, subject to such equity of redemption by the said W. S. as aforesaid; and the said S. Webb being so possessed of such reversion of and in the said demised premises, with the appurtenances, so bargained and sold to her as aforesaid, and the further reversion, with the appurtenances belonging as last aforesaid, and subject as aforesaid, afterwards, to wit, on the eighteenth of February, in the year last aforesaid, at Westminster aforesaid, by a certain other indenture of release then and there made between the said W. M. T. of the first part, the said W. S. of the second part, and the said S. Webb of the third part, for the considerations therein mentioned the said W. M. T. (at the request and by the direction of the said W. S.), and also the said W. S. according to their respective estates and interests therein granted, retained, and confirmed to the said S. Webb the said last-mentioned reversion of and in the said demised premises, with the appurtenances, to hold the same unto and to the use of the said S. Webb, her heirs and assigns for ever, free and absolutely discharged from all right and equity of redemption whatsoever; by virtue of which said last-mentioned indenture, and by force of the statute for transferring uses into possession, the said several and respective estates and interests of the said W. M. T. and R. W. of and in the said demised premises, with the appurtenances, in respect whereof the said covenants were so made by the said George with the said W. S. as aforesaid became and were wholly merged, extinguished, and determined, to wit, at Westminster aforesaid; and this the said George is ready to verify; wherefore he prays judgment if the said W. S. ought to have or maintain his aforesaid action thereof against him, &c. : And for a further plea in this behalf, the said George, by like leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, saith, that the said W. S. ought not to have or maintain his aforesaid action thereof against him; because he says, that the said R. W. before, and at the time of making the said indenture in the said declaration mentioned, was lawfully possessed of the premises thereby demised, with the appurtenances, for the residue therein to come and unexpired of a certain term of ninety-nine years, commencing on the twenty-fourth of June, A. D. 1770, subject to an equity of redemption thereof by the said W. S. on payment of a certain sum of money with interest thereon to the said R. W.; and the said several covenants in the said declaration mentioned were, and each of them was, made by the said George with the said W. M. T. as aforesaid, in respect of the said several and respective estates and interests of the said W. S. and R. W. or one of them, in the said demised premises, with the appurtenances, and not otherwise; and the said George further saith, that after the making the said

3d Plea, that the estates and interests in premises in respect whereof covenants and each of them were made, were determined.

last-

4th Plea, that the covenants were made with plaintiff in respect of his equity of redemption, and not otherwise, and that the equity of redemption was purchased by the reverend in fee, and thereby the term was extinguished.

last-mentioned indenture, and during the term thereby granted, to wit, on the thirtieth of February 1787, such several and respective estates and interests of the said W. S. and R. W. of and in the said demised premises, with the appurtenances, in respect whereof the said covenants were so made by the said George with the said William as last aforesaid became and were wholly ended and determined, to wit, at Westminster aforesaid; and this he the said George is ready to verify; wherefore he prays judgment if the said W. M. S. ought to have or maintain his aforesaid action thereof against him, &c. : And for a further plea in this behalf, the said George, by like leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, saith, that the said W. M. T. ought not to have or maintain his aforesaid action thereof against him; because he says, that the said R. W. before, and at the time of the making the said indenture in the said declaration mentioned, was lawfully possessed of the premises thereby demised, with the appurtenances, for the residue then to come and unexpired of a certain term of ninety-nine years, commencing on the twenty-fourth of June, A. D. 1770, subject to an equity of redemption thereof by the said W. S. on payment of a certain sum of money with interest thereon to the said R. W.; and that the said several covenants in the said declaration mentioned were, and each of them was, made by the said George with the said W. S. as aforesaid, in respect of the said last-mentioned equity of redemption of him the said W. S. and not otherwise; and the said George further saith, that after the making of the said last-mentioned indenture, and during the term thereby granted, to wit, on the thirtieth of May, A. D. 1785, at Westminster aforesaid, the said R. W. departed this life, having first duly made his last will and testament in writing, and thereby constituted and appointed the said S. W. sole executrix; and that the said S. W. after the death of the said R. W. duly proved his said will in the prerogative court of the archbishop of C. and took upon herself the burthen of the execution thereof, whereby the said S. W. became and was possessed of the said reversion of and in the said demised premises, with the appurtenances, for the then residue of the said term of ninety-nine years, subject to such equity of redemption by the said W. S. as last aforesaid; and being so possessed thereof, afterwards, to wit, on the thirteenth of February, A. D. 1787, at Westminster aforesaid, by a certain indenture of lease then and there made between one W. M. T. of the first part, the said W. S. of the second part, and the said S. Webb of the third part, the said W. S. for the considerations therein mentioned, released his said last-mentioned equity of redemption to the said S. W. and thereby the said last-mentioned equity of redemption, in respect whereof the said covenants were so made by the said George with the said W. S. became and were wholly extinguished and determined, to wit, at Westminster aforesaid; and this he the said George is ready to verify; wherefore he prays judgment if the said W. S. ought to have

have or maintain his aforesaid action thereof against him, &c. : And for a further plea in this behalf, the said George, by like leave of the court here for that purpose first had and obtained, according to the form of the statute in such case made and provided, saith, that the said W. ought not have or maintain his aforesaid action against him; because he says, that after the making of the said indenture in the said declaration mentioned, and during the time thereby granted, to wit, on the thirteenth of February 1787 aforesaid, all the estate and interest of the said W. M. T. of and in the said demised premises, with the appurtenances, became and were wholly ended and determined, to wit, at Westminster aforesaid; and thus he the said George is ready to verify; wherefore he prays judgment if the said W. M. T. ought to have or maintain his aforesaid action thereof against him, &c.

5th Plea, that all estate and interest of plaintiff in premises became wholly ended and determined.

S. SHEPHERD.

MR. TIDN'S OPINION.

I have reconsidered this case, and am of opinion that it will turn upon whether the defendant's covenants are to be considered as real covenants in respect of the plaintiff's equity of redemption, or the reversion of Richmond Webb for ninety-nine years, or as personal covenants entered into by the plaintiff, as a trustee for the benefit of the ultimate reversion in fee. For if they are to be considered as covenants of the former kind, then the plaintiff's equity of redemption, as well as R. Webb's reversion for ninety-nine years, being both one, the covenant binds upon them mutually. See Com. Dig. tit. Cov. E. and the authorities thereon cited, particularly Yelv. 18, 19. Owen 176 T. Ryms. 27 Yalk. 199 1d Ryms. 528. The covenants in themselves are entirely of real and not of a personal nature, and there is a peculiar reason why the covenant to repair is made for the benefit of the mortgagee, he being the person most materially affected by the not repairing (this being the case, and the mortgagee having an estate and interest in the premises), as to which see 1 Atk. 65 606; and it not being expressed that the covenants were made for the benefit of any other person, it seems to be reasonable to conclude that they were made merely in respect of, and must be confined to the equity of redemption. It must indeed be allowed, as was thrown out by Lord Kenyon in delivering the opinion of the Court on the former argument, that a

party may covenant with a stranger to pay a certain rent in consideration of a benefit to be derived under a third person; but in the present case the covenant was not a stranger, nor even the covenant expressed to be made for the benefit of a third person, as in 1 Mod. 213 2 Mod 155. This is the case in the covenants in an *antient lease*, which, according to Lord Hale, cannot be broken by assignment, *see* 1 Madox Reg. 23; but admitting that the covenants were made in respect of R. Webb's reversion for ninety-nine years, that reversion is merged by the acceptance of the fee, and consequently is determined. To say that the covenant shall be extended further, and considered as made for the benefit of the reversion in fee, is not only contrary to the provisions in before mentioned, but also the opinion of the court on the former argument for the fee want or provide, they will prevent the reversioner in fee from maintaining an action upon the covenants in his own name, will also prevent him from having the benefit of them in the present action, his title being paramount to and wholly unconnected with the title entered of the covenant next to mention on the indictment, that covenants made in trust as an estate shall have a greater effect than a covenant made with the *assignor* himself, and I think it to be clear, that if the covenant had been made with R. Webb, they would have determined upon the merger of his reversion for ninety-nine years.

Demurrer, for that the defendant has alledged as fact that the covenants were made in respect of the respective estates and interests, which is not matter fit to be averred, or upon which if sue can be taken; and if fit, does not shew in respect of which of the estates and interests covenants were made, the other causes were similar to the 2d plea, following the language of the plea.

And as to the said plea by the said George first above pleaded in bar, and whereof he hath put himself upon the country, the said William doth the like: And as to the said plea by the said George secondly above pleaded in bar the said William saith, that he, by reason of any thing in that plea alledged by the said George, ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says, that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from having and maintaining his aforesaid action thereof against the said George, and that he the said William is not in any wise bound to answer the same; and thus he is ready to verify; wherefore for want of a sufficient plea in this behalf he prays judgment and his damages by reason of the said breaches of covenant in the declaration mentioned to be adjudged to him; and for causes of demurrer in law the said William, according to the form of the statute in such case made and provided, sets down and shews to the court the causes following, *i. e.* for that the said George in his said second plea has alledged as a fact, that the covenants in the said declaration mentioned were made by the said George with the said William in respect of the several and respective estates of the said William and R. Webb, or one of them, in the said demised premises, with the appurtenances in the said plea specified, and not otherwise, which is not a matter fit or competent to be averred, or upon which any issue can be taken or tried; and for that, supposing the same was fit and competent to be averred, it is not shewn in respect of which of their said estates or interests the said covenants were made; and for that the said plea is in various other respects insufficient, defective, and informal, &c.: And as to the said plea of the said George thirdly above pleaded in bar, the said William says, that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from having and maintaining his aforesaid action thereof against the said George, and that he the said William is not in any wise bound to answer the same; and thus he is ready to verify; wherefore for want of a sufficient plea in this behalf he prays judgment and his damages, by reason of the said breaches of covenant in the said declaration mentioned to be adjudged to him; and for causes of demurrer in law the said William, according to the form of the statute in such case made and provided, sets down and shews to the court here the causes following, *i. e.* for that the said George hath in his said third plea alledged as a fact, that the covenants in the said declaration mentioned were made by the said George with the said William in respect of the said several and respective estates and interests of the said William and Richmond W. or one of them in the said demised premises, with the appurtenances, and not otherwise, which is a matter not fit or competent to be averred, or upon which any issue can be taken or tried; and for that if the same was fit or competent to be averred,

it is not shewn by the said plea in respect of which of their estates and interests the said covenants were made; and for that it is not shewn by the said third plea what respective estates and interests the said Richmond and William had in the said demised premises, or how or in what manner the same became, ended, and determined; and for that the said George hath by his said plea alledged matter upon which no material or decisive traverse can be taken, but which is altogether unflutable; and for that the said plea is in various other respects insufficient, defective, and informal, &c.: And as to the said plea by the said George fourthly above pleaded in bar, the said William says, that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from having and maintaining his aforesaid action thereof against the said George; and that he the said William is not in any wise bound to answer the same; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf he prays judgment and his damages, by reason of the said breaches of covenant in the said declaration mentioned to be adjudged to him; and for causes of demurrer in law the said William, according to the form of the statute in such case made and provided, sets down and shews to the court here the causes following, *i. e.* for that the said George hath in his said fourth plea alledged as a fact, that the covenants in the said declaration mentioned were made by the said George with the said William in respect of a certain equity of redemption of the said William in the said demised premises, with the appurtenances, in the said plea mentioned, and not otherwise, which is not a matter fit or competent to be averred, or upon which any issue can be taken or tried; and for that it is not shewn by the said plea that the said William had any estate or interest in the said demised premises to which the said covenants could be annexed, or upon which the remedy upon such covenants could be assignable; and for that the said plea is in various other respects insufficient, defective, and informal, &c.: And as to the said plea by the said George lastly above pleaded in bar, the said William says, that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from having and maintaining his aforesaid action against the said George; and that he the said William is not in any wise bound by the law of the land to answer; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf he prays judgment and his damages, by reason of the said breaches of covenant in the declaration mentioned to be adjudged to him; and for causes of demurrer the said William, according to the form of the statute in such case made and provided, sets down and shews to the court the causes following, *i. e.* for that it is not shewn by the said last plea that the said William had any estate or interest in the said demised premises, with the appurtenances, to which of the said covenants could be annexed, or with which the remedy upon such covenants would

be assignable, neither is it shewn what estate or interest the said William had therein, or how or in what manner the same became ended and determined; and for that the said George hath by his said plea alleged matter which is not fit or competent to be averred, and upon which no material or decisive traverse can be taken, but which is altogether unissuable; and for that the said plea is in various other respects insufficient, defective, and informal, &c.

G. Wood.

A joinder in demurrer was added by the clerk of the jury in marking up the back with a continuance to *cont. Juri.* and award of a writ of *Writ. de Juri.* next the eighth day from the Holy Trinity.

In Trinity Term the plaintiff obtained judgment upon the demurrers, and also a verdict upon the issue, of which the following entry was drawn.

Continuance.

At which day, *i. e.* on Wednesday next after eight days from the Holy Trinity, before our lord the king at Westminster, come the parties aforesaid, by their attorneys aforesaid, and hereupon all and singular the premises, whereof the parties have put themselves on the judgment of the court, being seen and underscored by the court here, and mature deliberation being had thereupon, it appears to the court here that the several pleas by the said George secondly, thirdly, fourthly, and lastly, above pleaded in bar, and the matters in those pleas, or in either of them respectively continued, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from having and maintaining his action laid set on against the said George; therefore it is considered that the said William, notwithstanding any thing in the said second, third, fourth, and last pleas, or either of them respectively alleged, recover his damages, by reason of the said breaches of covenant in the said declaration mentioned, in case a verdict be given for the said William against the said George upon the issue within joined between them to be tried by the country, and as to the trial of the said issue, the process directed is continued between the parties by the jury aforesaid, being returned between them before our said lord the king at Westminster until Wednesday next after fifteen days from the Holy Trinity, and the right honourable lord-lloyd Kenyon, his majesty's chief justice, assigned to hold pleas before the king himself, shall next come on Tuesday the fifth day of June, at Westminster Hall, in the said county of Middlesex, according to the form of the statute in such case made and provided, for default of the said jurors because none of them did appear; and now at this day, that is to say, on Wednesday next after fifteen days from the Holy Trinity, before our said lord the king at Westminster, come the parties aforesaid, by their respective attorneys aforesaid, and the said chief justice, before whom the said issue was tried, sent here the record before him had in these words, to wit, afterwards, *i. e.* on the day and at the place within mentioned, before the right honourable Lloyd Lord Kenyon, his majesty's chief justice, assigned to hold pleas before the king himself (Roger Kenyon, *claque*,

elquire, being afforated unto him, according to the form of the statute in such case made and provided), comes, as well the within named William Sticks as the within named George Russell, by their selve attorneys within contained, and the jurors of the jury whereof mention is within made, being called and summoned, likewise come, who to speak the truth as to the issue within joined between the parties aforesaid being duly elected, tried, and sworn, upon their oath say, that the indenture in the within declaration mentioned is the deed of the said George, in manner and form as the said William hath in declaring alleged, and they assent the damages of the said William, by reason of the breaches of covenant within assigned, besides the costs and charges by him about his suit in this behalf expended, to seven hundred and eighteen pounds; and for those costs and charges to forty shillings; therefore it is considered by the court here, that the said William recover against the said George the costs, damages, and charges by the said jury in form aforesaid assented; and also twenty six pounds ten shillings for his costs and charges of incurrence by the said court adjudged to the said William with his assent, which damages in the whole amount to seven hundred and eighty-six pounds ten shillings; and let the said George, because he hath denied his deed, be taken, &c.

The 16th of 15 and 17 Ch. 2. c. 8. cure the worst of the errors of *Oraculorum*, or of the false and of the true, other, but do not cure any in those of them, to the contrary of *Oraculorum*, for, as will come out the full 5th Art. and here, and the expression only the court of conscience, but it is not speculating a judgment upon certainty, that neither *propter*, or any thing in law of it, should be concerned in the said. My reason is, that the court takes away the *capitulum* only in of element and of actions, there particular mention is, but does not extend to the case of a man's

denying his own debt, or several other influences, which judgment even *ex aequo* appears to have been extremely partial. In support of the defendant's other objections, the defendant's reported precedents of payment of the nature in the defendant's circumstances are without a *specimen*, so that it is like a precedent of a *specimen* judgment in equity, upon a verdict for the plaintiff on a *specimen* Comb. 387. Carr. 7. Coke, 65. b. 7. 11 Co. c. 28. Appen. to b. 3. id. 12. Long's Int. 219. 3-4. *ibid.* 379.

С. МАРШАЛЛ.

BY LESSEE.

May Term, 30. Geo. III.

WILTSHIRE, to wit: James Wheeler complains of Eleanor Brumham, being, &c. being in a plea of breach of covenant; for that whereas by a certain indenture made the fourth day of November, A. D. 1786, at Chittam St. Mary, in the county of defendant demised to plaintiff premises for one year, and at the expiration of that year for the natural life of plaintiff year to year, except the first day of the year, so long as defendant's estate and interest should continue without interruption from her or any person lawfully claiming; Breach, that one T. T. Twissley claiming, hindered and prevented, and kept her out of possession, with avowment of special damage.

of Wilts, between the said Eleanor (by the name and description of Eleanor B. of Chittam St. Mary, in the county of Wilts, widow), of the one part, and the said James (by the name and description of James W. of Chittam All Saints, in the said county, maltster), of the other part, one part of which said indenture, bearing date the day and year aforesaid, and sealed with the seal of the said E. the said J. now brings here into court, the said E. for the considerations therein mentioned, did demise, lease, and to farm let unto the said James, all that her estate or living, situate, lying, and being in Chittam St. Mary aforesaid, with the barn, stable, and backside thereunto belonging, and also all that her other estate or living, situate, lying, and being in Chittam All Saints aforesaid, together with all the arable, meadow, and pasture land, sheep-leights, commons, and common of pasture, ways, waters, easements, profits, commodities, advantages, and appurtenances whatsoever, to the said several premises belonging or in any ways appertaining (except as in the said indenture is excepted), to have and to hold the said estates and premises therein before mentioned, and intended to be thereby demised with the appurtenances (except as before excepted) unto the said James W. his executors, administrators, and assigns, in manner following, that is to say, the meadows, and pasture land of and belonging to the said demised premises, the arable lands lying to farmer fallow, and the joint use of the barton from the fourteenth of May then next following, and all the rest of the arable and sheep-leights to the same premises belonging, from the tenth of October then next following, the barn, and the whole of the stable and backside of and belonging to the said demised premises from the first of July 1788, for the term of one year from the several commencements aforesaid next ensuing, and fully to be complete and ended (it to the estate and interest of her the said E. her executors, administrators, assigns, then and should to long continue) at a certain yearly rent, the first payment thereof was to be made on the first day of April in the said year 1788, and that an acknowledgment of such of the said arable or pasture lands as should be taken up, and also under such covenants and agreements in the said indenture specified, and the said E. did, by the said indenture, covenant, promise, and agree to and with the said J. among other things, in manner following, *v. z.* that from and immediately after the end or expiration of the said demised term of one year, it should and might be lawful to and for the said James, his executors, administrators, and assigns, to hold and enjoy all and singular the said demised premises, with the appurtenances, (except as before excepted) for and during the term of the natural life of the said E. to commence from and immediately after the end or expiration of the aforesaid demised term of one year, upon and under the like terms, covenants, and conditions aforesaid (in case the estate, title, or interest of the said Eleanor should so long continue therein), the last day of every and each year of such term only excepted, for the said E. her executors, administrators, and assigns, to enter upon and enjoy the same premises during such last day

day of every and each year of the said last-mentioned term, only doing no wilful damage thereby to the said J., and further that it should be lawful for the said J. his executors, administrators, and assigns, by and under the rents and covenants therein before referred, expressed, and contained on his and their parts to be paid, observed, and performed, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the premises aforesaid (except as in the said indenture was before mentioned to be excepted), in manner aforesaid, for and during the said several terms of one year, and the term of the natural life of the said E. B. (determinable as aforesaid), except the last day as before mentioned, without any interruption or disturbance whatsoever of or by the said E. her executors, administrators, or assigns, or of any other person or persons whatsoever, lawfully claiming or to claim by, from, or under her, them, or any or either of them, as by the said indenture (relation being thereunto had) will, amongst other things, more fully appear: And the said J. says, that although the estate, title, and interest of the said E. in the several premises by the said indenture demised are still continuing and undetermined; and although the said J. hath always, from the time of the making the said indenture hitherto been ready and willing well and truly to perform and fulfil all the covenants and agreements therein contained, on his part, according to the tenor and effect thereof, to wit, at C. St. Mary aforesaid; yet protesting that the said E. hath not performed or fulfilled any of the covenants in the said indenture contained on her part, the said James in fact says, that he the said James has not peaceably occupied, possessed, and enjoyed, nor could he peaceably and quietly hold, occupy, possess, and enjoy the premises by the said indenture demised (except as was therein before mentioned to be excepted), by or under the rents and covenants therein referred, expressed, and contained, on the part of the said James, his executors, administrators, and assigns, to be paid, observed, and performed, or otherwise, either *during the term of one year thereby*, [Ch. Jac. 301.] or at any time since without interruption or disturbance by the said E. her, or any other person claiming, by, from, or under her, but on the contrary thereof, the said E. and one Thomas Tibbs, lawfully claiming under her, hindered and prevented the said James from entering on the said demised premises, or any part thereof, at the respective times when the said demise to him thereof commenced as aforesaid, and have from thence hitherto wholly kept him out of the possession of the said premises, contrary to the tenor and effect of the said indenture, and of the covenants of the said E. in that behalf made as aforesaid, whereby he the said James hath not only lost and been deprived of all the gains and profits which would have accrued to him from the occupation and enjoyment of the said demised premises, according to the said indenture, but has sustained a considerable loss upon certain large quantities of manure, farming utensils, and implements of husbandry, which he had purchased with a view to the cultivation and manurance of the said premises,

and which, by the means aforesaid, became of little or no use or value to the said James, and he has also been put to divers other great charges and expences, to wit, at C. St. Mary aforesaid; and to the said James saith, that the said E. (although often requested) hath not kept the covenant so by her made with the said James in this behalf, but hath broken the same, and to keep the same with the said James hath hitherto wholly refused, and still refuses, to the damage of the said James of five hundred pounds; and therefore he brings suit, &c. Pledges, &c.

S. MARRYATT.

Declaration in NORFOLK, to wit. Robert Dinslev and Nathaniel Colly
covenant for complin of John Constance, being, &c. in a plea of breach of
lessee against covenant: for that whereas by a certain indenture of lease made
assignee of les- the certain day of, &c. at, &c. between Adam Constance and Par-
for, that plain- son Constance herein mentioned of the first part, and the said
the land of plaintiff of the other part (one part of which said indenture, seal-
ed to him by ed with the respective seals of the said Adam and Parson, they the
out any notifi- said Robert and Nathaniel being into court here, the date whereof
ation, &c. is the day and year aforesaid), they the said Adam and Parson,
person, claimed for the considerations in the said indenture mentioned, did, and
common cop- each of them did demise, let, &c. and to transfer unto the said
ture on the de- plaintiffs their executors and administrators, all that messuage or
vised farm-house of them the said Adam and Parson, or one of them,
whereby the with the barns, stables, houses, out-houses, cellars, buildings,
plaintiff was in- yards, gardens, cloths, mel-luies, fields, and pieces and parcels of
terrupted in the land, meadows, and pasture ground, heath, and land to the said
possessing the farm-house belonging, and therewith occupied or enjoyed; and
premises also all that sheep-walk and fish-pond, and liberty of feed and
solage for sheep to the said farm and premises, belonging and
also therewith occupied of them the said Adam and Parson, or
one of them, situated, lying, and being in Bodham, Sperringham,
&c. &c. &c. all in the said county of Norfolk and towns adja-
cent, and at the same time then in the use and occupation of
J. C. the said, and J. C. the clerk, or one of them, their, or
one of them, under certain conditions, and also that cottage, &c. &c.
(to wit, with the covenants, which were to this effect, that the plain-
tiffs should enjoy the premises without any interruption or mo-
lestation, on paying certain yearly rent), by virtue of which said
covenant the said plaintiffs afterwards, to wit, on, &c. at, &c. en-
tered into, and became and were, and still are possessed of the said
certain premises, with the appurtenances, for the said term so to
them there claimed as aforesaid, the reversion thereof belonging
to the said Adam and Parson; and the said plaintiffs being to pos-
sess the same, and the said reversion to belonging as aforesaid,
until the reversion afterwards, and during the continuance of the
said demise to wit, on, &c. at, &c. came to and vested in the
said defendant by assignment thereof then and there made to him
the said defendant, who from thence hitherto hath been, and still
is entitled to the same, to wit, at, &c. And the said plaintiffs in
fact

fact further say, that although they the said plaintiffs, from the time of the making of the said demise, hitherto have paid the said yearly rent, and performance, fulfilled, and kept the covenants and agreements in the said indenture mentioned, which on their and each of their parts and behalf were to be performed and kept, according to the tenor and effect, intent and meaning of the said indenture; yet protesting that the said defendant hath not, since the said assignment of the said reversion unto him the said defendant, kept, performed, or fulfilled any term in the said indenture contained on his part and behalf, as such assignee as aforesaid, to be performed and fulfilled: In fact the said plaintiffs say, that they the said plaintiffs have not, since the said assignment of the said reversion unto him the said defendant, hitherto quietly and peaceably had, held, used, occupied, possessed, and enjoyed the said demised premises, with the appurtenances (except as before excepted) without any interruption, according to the said indenture of lease, and of the covenant of the said Adam and Parson in that behalf made for themselves and their assigns as aforesaid; but on the contrary, that of the said plaintiffs in fact say, that after the making of the said demise, and during the continuance thereof, and since the said assignment of the said reversion of and in the said demised premises as aforesaid unto him the said defendant, to wit, on, &c. divers persons, to wit, one James Emery, one Thomas Frankland, one John Clark, one Benjamin Emery, one Mary Newgate, one John Goat, one Robert Fish, one Robert Blanton, one Robert Ory, one George Legge, one Robert Gantly, one Thomas Welis, and one Robert Mays, claimed, and from thence hitherto have claimed, and still do claim to have, use, and enjoy, and during all that time of right ought to have had, used, and enjoyed, and still ought to have, use, and enjoy the several and respective courties of pasture hereafter mentioned, in and upon a certain large part of the said demised premises, to wit, in and upon divers, to wit, thirty acres of land, parcel of the said demised premises, situate, lying, and being in, and parcel of a large tract of land called the Heath, otherwise Bodnam Heath, lying in Bodnam aforesaid, in the county aforesaid, for and in respect of the several premises following, to wit, for and in respect of a certain messuage, and divers, to wit, seventy acres of land with the appurtenances, situate, lying, and being in B. aforesaid, in the county aforesaid, whereof the said James Emery, during the time last aforesaid, was and still is seised in his demise as of fee, and for and in respect of a certain other messuage, and divers, &c. &c. (set forth the respective premises of the several persons claiming the same as Emery's), in respect of which said several premises, with the appurtenances, they the said J. E. T. F. J. C. B. E. M. N. J. G. R. F. C. R. B. &c. &c. respectively, and all those whose estate they then respectively had of and in the said several messuages, lands, and premises, with the appurtenances respectively, from time whereof the memory of man is not to the contrary, have had, used, and

have

have respectively been accustomed to have, and of right ought to have respectively had and used, and they still of right ought to have respectively to have and use for themselves respectively, their and each of their farmers and tenants, occupiers of the said several messuages, lands, and premises, with the appurtenances, common of pasture for the respective times and periods, and in the several and respective manners following, to wit, common of pasture for all their commonable heifers respectively, levant and couchant, upon the said several respective messuages, lands, and premises, with the appurtenances, in every year in which such parts as aforesaid of the said demised premises in which such rights of common were so claimed as aforesaid, have not had any corn grown thereon for the purpose of a crop of corn then in every such year from Michaelmas-day, according to the old style, in case such parts as aforesaid of the said demised premises in which, &c. have not then been sown with any corn for the purpose of a crop of corn until Lady-day next following, according to the same old style, or until such parts as aforesaid of the said demised premises in which, &c. or some part thereof, hath been sown with any corn for the purpose of a crop of corn which hath first happened, and in every year in which such parts as aforesaid of the said demised premises in which, &c. parcel, &c. or any part thereof, hath had any corn grown thereon for the purpose of a crop of corn then in every such year from Michaelmas day according to the old style, in case all the said corn grown thereon for the purpose of a crop of corn hath been before that time cut down, taken, and carried away, and such parts as aforesaid of the said demised premises in which, &c. have not been before that time sown with any corn for the purpose of a crop of corn, but in case the said corn grown on such parts as aforesaid of the said demised premises in which, &c. in that year, for the purpose of a crop of corn, hath not been cut down, taken, and carried away before the said Michaelmas day, according to the said old style, then from the time that all the corn grown on such parts as aforesaid of the said demised premises, in which, &c. for the purpose of a crop of corn in that year hath been cut down, taken, and carried away, until Lady-day then next following, according to the same old style, or until such parts as aforesaid of the said demised premises, in which, &c. or some part thereof, have or hath been sown with any corn for the purpose of a crop of corn which hath first happened, as belonging and appertaining to the said several messuages, lands, and premises, with the appurtenances of the said J. L. T. F. &c. &c. respectively, and also certain other common of pasture, to wit, common of pasture for all their commonable heifers respectively, levant and couchant, upon their said several messuages, lands, and premises respectively, with the appurtenances in and upon such parts as aforesaid on the said demised premises, in which common of pasture was to be claimed by them as aforesaid, in every year in which such parts of the said demised premises, in which, &c. have not had any corn grown thereon for the purpose of a crop of corn, then

ENJOYMENT OF RIGHT OF COMMON.

then in every such year from the first day of November, according to the old style, in case such parts as aforesaid of the said demised premises in which, &c. have not then been sown with any corn for the purpose of a crop of corn until the first day of February then next following, according to the same old style, or until such parts as aforesaid of the said demised premises in which, &c. or some part thereof, have or hath been sown with any corn for the purpose of a crop of corn which hath first happened, and in every year in which such parts as aforesaid of the said demised premises in which, &c. or any part thereof, have or hath had any corn grown thereon, for the purpose of a crop of corn in every such year from the first day of November, according to the old style, in case all the corn grown thereon for the purpose of a crop of corn hath been before that time cut down, taken, and carried away, and such parts as aforesaid of the said demised premises, in which, &c. or any part thereof, have or hath not been before that time resown with any corn for the purpose of a crop of corn, but in case the said corn grown on such parts as aforesaid of the said demised premises, in which, &c. for the purpose of a crop of corn in that year, hath not been cut down, taken, and carried away before the said first day of November according to the said old style, then from the time that all the corn grown on such parts as aforesaid of the said demised premises, in which, &c. for the purpose of a crop of corn in that year hath been cut down, taken, and carried away, until the first day of February then next following, according to the same old style, or until such parts as aforesaid of the said demised premises, in which, &c. or some part thereof have or hath been resown with any corn for the purpose of a crop of corn which hath first happened, as to their said several messuages, lands, and premises respectively belonging and appertaining, and also certain other common of pasture, to wit, common of pasture for all their commonable heifers respectively, levant and couchant upon their said several messuages, lands, and premises, with the appurtenances respectively, in and over such parts as aforesaid of the said demised premises in which they so claimed common of pasture as aforesaid every year from the first day of November, according to the old style, until the first day of February then next following, according to the same old style, in case such parts as aforesaid of the said demised premises, in which, &c. have not had any corn then growing thereon for the purpose of a crop of corn, nor been then sown with any corn for the purpose of a crop of corn as to the said several messuages, lands, and premises respectively belonging and appertaining, which said several commons of pasture they the said J. B. &c. &c. by themselves and their respective tenants for the time being, occupiers of the said several messuages, lands, and premises, with the appurtenances, during all the time of such their respective claims thereof as aforesaid, had, used, and enjoyed, by and with their respective commonable heifers, levant and couchant, on their said several respective messuages, lands, and premises, with the appurtenances, and thereby interrupted and disturbed

LESSEE (OF A WAREHOUSE.—WHARF, &c.)

turbed them the said plaintiffs in the possession, use, occupation, holding, and enjoyment of the said demised premises, and by reason and in consequence of such several rights of common, and of the existence and exercise thereof, they the said plaintiffs have been and are hindered and prevented from having, using, and enjoying the said sheep-walk so to them demised as aforesaid, and have thereby been further interrupted and disturbed in the possession, use, and occupation of the said demised premises, contrary to the tenor and effect of the said indenture of lease, and of the covenants of the said Adam and Parson so by them made as aforesaid, for themselves, their heirs, and assigns; whereby and by reason whereof the estate and interest of them the said plaintiffs, of, in, and under the aforesaid demise, have been and still are greatly injured and lessened in value, to wit, at, &c.; and so the said plaintiffs say, that the said defendant (although often requested), hath not kept the said covenant so made as aforesaid with the said Robert and Nathaniel in this behalf; but hath broken the same, and to keep the same with the said plaintiffs hath wholly refused, and still doth refuse, to the damage of the said plaintiffs of one thousand pounds; and therefore they bring their suit, &c.

G. WOOD,

Declaration by
offices of a shed
and counting-
house, with the
use of a wharf
and blind dock,
at a certain rate
a barge, for not
permitting
plaintiffs to
bring their barges
to the wharf
and blind dock,
preventing them
drift, and pre-
venting the
plaintiffs land-
ing time, al-
though they ten-
dered the sta-
nded price,
whereby plain-
tiffs were hin-
dered in their
business.

MIDDLESEX, ss. J. G. E. C. and E. W. complain of E. P. being, &c. in a plea of breach of covenant; for that whereas by a certain indenture made, &c. at, &c. between the said J. P. of the one part, and the said plaintiffs of the other part (one part, &c.) the said J. P. for the considerations therein mentioned, did demise, lease, and to farm let unto the said plaintiff all that shed or warehouse, together with the counting-house thereto adjoining, situate, and standing in Great Scotland Yard, in the parish of, &c. together with free liberty to and for the said plaintiffs, their executors, administrators, and assigns, to use the wharf and blind dock leading from the river Thames to the said warehouse or shed, to deliver and load all such barges and other craft as the said John, &c. should think proper to bring there for that purpose, paying to the said John Price, his executors, administrators, or assigns, at the rate of seven shillings for every barge so delivered or loaded, to hold the said shed or warehouse, counting-house, erections, and all and singular other the premises by the said indenture demised, or meant or intended so to be, with their and every of their appurtenances, unto the said plaintiffs, their executors, administrators, and assigns, from the feast-day, &c. then next ensuing the date of the said indenture, for and during, and unto the full end and term of twenty years from thence next ensuing, and fully to be complete and ended, determinable nevertheless as in the said indenture is in that respect mentioned, yielding and paying therefore yearly and every year during the said term thereby granted unto the said J. P. his executors, &c. the yearly rent or sum of twelve pounds at the days and times, and

averment of
special damage.

AGAINST LESSOR.

and in manner therein in that respect mentioned, and appointed for payment thereof; and the said J. P. for himself, his executors, &c. did, by the said indenture, covenant, promise, and agree, to and with the said plaintiffs, and each and every of them, their and each and every of their executors, &c. that they the said plaintiffs, their executors, &c. should, during the said term thereby demised, have the liberty of bringing their barges up the wharf and blind dock leading to the said shed or warehouse, and of landing and carting lime from the said barges, and loading breeze into the said barges on paying the said J. P. his executors, &c. at the rate of seven shillings for every barge load so landed and loaded as aforesaid, as by the said indenture (reference being thereto had) may more fully and at large appear; by virtue of which said demise they the said plaintiffs afterwards, to wit, on, &c. entered into the said demised premises, with the appurtenances, and then and there became and were possessed thereof for the said term to them thereof granted as aforesaid; and although the said plaintiffs have always since the making of the said demise well and faithfully done and performed all things in the said indenture contained on their part and behalf to be done, performed, fulfilled, and kept, according to the tenor and effect of the said indenture; yet protesting that the said J. P. hath not done, &c. any thing in the said indenture contained on his part and behalf to be done, &c. : In fact the said plaintiffs say, that they the said plaintiffs have not had, nor would he the said J. P. permit or suffer them, during the said term so to them demised as aforesaid, hitherto to have the liberty of bringing their barges up the said wharf and blind dock in the said indenture mentioned, leading to the said shed or warehouse in the said indenture also mentioned, and of landing and carting lime from the said barges, according to the tenor and effect of the said indenture, and of his aforesaid covenant in that behalf; but on the contrary thereof they the said plaintiffs say, that he the said J. P. during the said term, to wit, on, &c. to wit, at, &c. wrongfully and injuriously unmoored, cut away, pushed away, removed and carried from and out of the said wharf and blind dock hereinbefore and in the said indenture mentioned, a certain barge laden with lime of them the said J. G. &c. before then by them brought into and up the said wharf and dock, and there moored and fastened under and by virtue of the aforesaid indenture, for the purpose of unloading and of landing and carting their said lime from their said barge unto the said shed or warehouse so to them demised as aforesaid, and did thereby then and there hinder and prevent them from enjoying the said liberty so to them in that respect granted as aforesaid, and from so loading and carting the said lime, contrary to the tenor and effect of the said indenture, and of the covenant of the said J. P. in that behalf made as aforesaid: And the said plaintiffs in fact further say, that afterwards, to wit, on, &c. at, &c. they the said plaintiffs being then and there about to bring into and up the said walk and blind dock in the said indenture mentioned,

1st Breach.

2d Breach.

COVENANT.—LESSEE AGAINST LESSOR.

tioned, a certain other barge loaden with lime of them the said plaintiffs, for the purpose of landing and carting away the same under and by virtue of the said indenture, and of the said grant of the said liberty for that purpose tendered and offered, and were then and there ready and willing to pay unto the said J. P. the sum of seven shillings, for and in respect of the said last-mentioned barge, and of so landing and delivering the said lime with which she was so then and there loaden as aforesaid, according to the tenor and effect of the said indenture, and then and there requested and required the said J. P. to suffer and permit them so to do, but the said J. P. would not then and there accept the said sum of seven shillings, but refused so to do; and also then and there refused to suffer and permit, and hindered and prevented them the said plaintiffs from bringing up their said last-mentioned barge into the aforesaid wharf and dock, there landing and carting away the said lime with which she was then and there loaden as aforesaid, contrary to the tenor and effect of the said indenture, and of the said covenant of the said J. P. in that behalf made as aforesaid: And the said plaintiffs in fact further say, that although they the said plaintiffs have always, since the said last-mentioned breach of covenant, hitherto wanted and been desirous, and have frequently requested the said J. P. to suffer and permit them to exercise, and to have and enjoy the said liberty so to them granted as aforesaid for the several and respective purposes, and at the rate and upon the terms in the said indenture in that behalf specified; yet the said J. P. hath not suffered or permitted them so to do, but on the contrary hath, during all that time, to wit, at, &c. absolutely forbid and altogether denied them the use and exercise of the said liberty, and hindered and prevented them from, and obstructed them in the use and exercise thereof, and in the bringing their barges up the said wharf and dock hereinbefore mentioned, and there landing, loading, carting away, and delivering of their lime and breeze by them during that time to be, and which would otherwise have been there landed, loaded, carted, and delivered, contrary to the tenor and effect of the said indenture, and of the said covenant of the said J. P. in that behalf made as aforesaid, to wit, at, &c.; whereby, and by reason of which said several obstructions, interruptions, and hindrances of them the said plaintiffs in the enjoyment and exercise of the said liberty so to them granted as aforesaid, they the said plaintiffs have lost and been deprived of all benefit and advantage that might and would have arisen and accrued to them from the use and enjoyment of such liberty, and have been greatly interrupted, impeded, and delayed in their trade and business of lime merchants, and also have been put to great and additional trouble, labour, and expence, in and about the unloading of their said barges, in landing and carting away their lime to the said shed or warehouse so to them demised as aforesaid, and in recovering and looking after, and taking care of the said barge so set adrift as aforesaid, and her aforesaid cargo, until the same could be unloaded and delivered, and

ASSIGNEE AGAINST ASSIGNOR.—QUIET ENJOYMENT.

the cargoes of the said barges so refused to be delivered at the said wharf and dock as aforesaid, were for a long time exposed to damage by wet and weather, and to the accidental casualties of fire, to wit, at, &c.: And the said plaintiffs say, that the said J. P. (although often requested) hath not kept with them the said plaintiffs the covenant so as aforesaid made between the said J. P. and them the said plaintiffs, but hath broken the same, and to keep the same with the said plaintiffs have hitherto wholly refused, and still refuses, to the damage of said plaintiffs of two hundred pounds, and therefore they bring suit, &c. V. LAWES.

Mr. Lawes advised that the verdict should be entered on the two first breaches only.

MIDDLESEX, to wit. John Newman complains of Samuel Barker, being, &c. of a plea of breach of covenant; for that whereas by a certain indenture of four parts, made on the eighth day of June in the year of Our Lord 1792, to wit, at Westminster, in the county of Middlesex, between John Winter and Thomas Rhodes of the first part, Edward Hilditch of the second part, the said S. of the third part, and the said John Newman of the fourth part (one part of which said indenture, sealed with the seal of the said Samuel, he the said John now brings into court here, the date whereof is the day and year aforesaid), it is witnessed that for the considerations therein mentioned, he the said Samuel did grant, bargain, assign, transfer, ratify, and confirm unto the said John, his executors, administrators, and assigns, certain lands, messuages, and tenements, with the appurtenances therein described, and particularly mentioned to be granted and assigned, to have and to hold the said granted and assigned premises, with the appurtenances, unto the said J. N. his executors, administrators and assigns, from thenceforth for and during all the rest, residue, and remainder of a certain term of sixty-five years and a half, wanting ten days, then to come and unexpired, but nevertheless subject to a certain yearly rent or sum of twenty-one pounds, and the observance and performance of certain covenants and agreements therein mentioned and referred to; and the said Samuel for himself, his heirs, executors, and administrators, did, by the said indenture (amongst other things), covenant, promise, and agree to and with the said J. N. his executors, administrators, and assigns, he and they paying the said annual rent of twenty-one pounds, and observing and performing the covenant, conditions, and agreement in the said indenture mentioned, and referred to from time to time, and at all times thereafter during the said term therein, peaceably and quietly have, hold, use, occupy, possess, and enjoy the said thereby granted and assigned premises, with the appurtenances (and from the feast of St. John the Baptist then last past), to receive and take the rents, issues, and profits thereof, and every part thereof, to and for his and their own proper use and benefit,

Declaration in B. R. in covenant by assignee against assignor of leasehold premises for breach of covenant for peaceable enjoyment and that premises are free from incumbrances, asserting breach for letting ground rent go in arrears, per quod plaintiff obliged to pay it to prevent a distress.

COVENANT.--ASSIGNEE AGAINST ASSIGNOR.

benefit, without the lawful let, suit, trouble, denial, eviction, interruption, or contradiction, of or by the said Samuel, or by any other person or persons whomsoever claiming, or to claim by, from, under, or in trust for him, and that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by the said Samuel, his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of and from all and all manner of former and other gifts, grants, bargains, sales, assignments, leases, mortgages, trusts, wills, rents, arrears of rents, executions, statutes, recognizances, judgments, debts, and all and singular other estates, titles, troubles, charges, burdens, and incumbrances whatsoever, heretofore had, made, done, committed, occasioned, or suffered by the said Samuel, or by any other person or persons whomsoever, lawfully claiming, or to claim by, from, or under, or in trust for him, save and except the said rent or yearly sum of twenty-one pounds, from thenceforth to be paid, and payable as aforesaid, as by the said indenture, relation being thereunto had, will (amongst other things) more fully and at large appear; by virtue of which said grant and assignment, he the said J. N. afterwards, to wit, on the said eighth day of June, in the year of Our Lord 1792 aforesaid, in the said indenture for that purpose mentioned, to wit, at Westminster aforesaid, in the county aforesaid, entered into and upon the said thereby granted and assigned premises, with the appurtenances as aforesaid, and became, and was and still is possessed thereof for the said rest, residue, and remainder of the said term of years therein as aforesaid; and although the said J. N. always from the time of the making of the said indenture, hitherto hath well and truly performed and fulfilled all things in the said indenture contained on his part and behalf to be performed and fulfilled; yet protesting that the said Samuel hath not done or performed any thing in the said indenture contained on his part and behalf to be performed and fulfilled, he the said J. N. in fact says, that before and at the time of the said grant and assignment of the said premises of the said John, large arrears of rent, to wit, forty-two pounds, for divers, to wit, for two years arrears of the rent aforesaid for the said premises, was and remained due and in arrear for the same to the ground landlord thereof, and that afterwards, and before the exhibiting of the bill of the said John, to wit, on the first day of March, in the year of Our Lord 1793, to wit, at Westminster aforesaid, in the county aforesaid, he the said John was called upon and forced and obliged to pay, and did then and there pay the same, in order to prevent his goods and chattels, then being on the said premises, from being distrained upon for the same, to wit, one A. B. to whom the same then and there of right was due and payable, whereof the said Samuel afterwards then and there had notice, and was then and there required to save, defend, keep harmless, and indemnified the said John from the same: Yet the said John in fact says, that the said Samuel not regarding his said covenant in that behalf made as aforesaid, did not, when he was

COVENANT.—MORTGAGES.

so requested as aforesaid, save, defend, keep harmless, and indemnified the said John for the said arrears of rent, or any part thereof, but wholly refused so to do, contrary to the form and effect of the said indenture, and of the said covenant of the said Samuel in that behalf made as aforesaid, to wit, at Westminster aforesaid, in the county aforesaid: And so the said John says, that the said Samuel, although often requested, hath not kept the covenant so made between the said John and the said Samuel, but hath broken the same, and to keep the same hath hitherto wholly refused, and still doth refuse, to wit, at W. aforesaid, in the said county aforesaid, to the damage of the said John of fifty pounds, and therefore he brings his suit, &c.; pledges.

T. BARNOW.

ON MORTGAGES.—BY MORTGAGEE.

MIDDLESEX. *ff.* Lawrence Dundas, baronet, complains of Evan Thomas, esquire, being, &c. of a plea of breach of covenant; for that whereas by a certain indenture, fourpartite, made the twenty-fourth of June, A. D. 1764, to wit, at Westminster, in said county of Middlesex, between, &c. the one part of which said indenture, sealed with the seal of said defendant, he said plaintiff now brings into court here, the date whereof is the same day and year aforesaid, [recite the indenture to the end of the covenant upon which you declare, which in this case was to pay interest of mortgage money, whilst defendant remained auditor of the mortgagor, after having paid off the interest upon another mortgage to Lady Tuften, then proceed as follows] as by the said indenture now brought into court here, relation being thereunto had will, amongst other things, more fully and at large appear; and said plaintiff saith, that said Thomas lord viscount Weymouth, party to said indenture, now brought into court here, hath not at any time hitherto paid, or caused to be paid to him said plaintiff, the said principal sum of seventeen thousand seven hundred pounds in said indenture mentioned, but that the same and every part thereof still remains unpaid, to wit, at W. aforesaid: And said plaintiff further saith, that said defendant always from the time of the making of said indenture, now brought into court here, until and upon the twenty-fourth of June, in the year 1776, and long after, to wit, until the day of exhibiting, &c. remained and continued to be the auditor of and to take and audit the accounts of the stewards, bailiffs, and receivers of the manors, lands, and hereditaments in Great Britain and Ireland of said Thomas lord viscount Weymouth, party to the indenture now brought into court here therein mentioned, and that said defendant did, during that time, receive sufficient of the rents and profits of the premises in and by the indenture now brought into court here, charged and demised to

Declaration
covenant for
non-payment
interest of mort-
gage money,
gainst the audi-
tor of the mort-
gagor.

Mortgagor.

BY MORTGAGEE AGAINST MORTGAGOR.

pay from time to time the interest and principal sum of two thousand three hundred pounds in said indenture mentioned, to said lady C. Tufton, and of said principal sum of seventeen thousand seven hundred pounds in said indenture mentioned to said plaintiff, according to the intent and true meaning of said indenture, and of the covenant of said defendant by him made in that behalf as aforesaid, to wit, at W. aforesaid; and said plaintiff further saith, that heretofore, to wit, on the twenty-fourth day of June 1766, at W. aforesaid, a large sum of money, to wit, the sum of pounds, for interest of said principal sum of seventeen thousand seven hundred pounds in said indenture mentioned, for a certain space of time, to wit, for the space of four years and the half of another year, ending on the day and in the year last aforesaid, being at and after the rate of five pounds for every hundred pounds of the said seventeen thousand seven hundred pounds by the year, became due and owing to said plaintiff, and still are in arrear and unpaid; and said defendant hath not paid said arrears of interest, or any part thereof, to said plaintiff, but hath wholly neglected so to do, contrary to the tenor and effect of the said indenture now brought into court here, and of the aforesaid covenant of said defendant so by him made with said plaintiff in this behalf as aforesaid, and so, &c. (add the conclusion in covenant) damages, five thousand pounds; pledges, &c.

Declaration in
mortgagee
mortgagor
for-pay-
ment of the
mortgage mo-
ney.

WORCESTERSHIRE, to wit. Ann Hill complains of Thomas Constable being in the custody, &c. in a plea of breach of covenant; for that whereas by a certain indenture made the sixth day of December, in the year of Our Lord 1783, at Eversham, in said county of Worcester, between said defendant of the one part, and said plaintiff of the other part (one part of which said indenture, sealed with the seal of the said defendant, and bearing date the day and year aforesaid, said plaintiff now brings into court here), the said defendant for and in consideration of the sum of twenty-five pounds of lawful money of Great Britain to him in hand paid by said plaintiff, did grant, bargain, sell, and demise unto said plaintiff, his executors, administrators, and assigns, certain premises in said indenture particularly mentioned and set forth, to have and to hold the same with the appurtenances unto said plaintiff, her executors, administrators, and assigns, from the day next before the day of the date of said indenture, for and during and unto the full end and term of one thousand years, without impeachment for any manner of waste, yielding and paying therefore the rent of one pepper corn, on the feast of St. Michael the Archangel in every year, if the same should be lawfully demanded, provided always and the said indenture was and is upon condition, nevertheless that if said defendant, his heirs, executors, or administrators should well and truly pay, or cause to be paid unto the said plaintiff, her executors, administrators, or assigns, the full sum of twenty-five pounds of lawful money of Great Britain upon demand,

BY ASSIGNEE OF MORTGAGOR, &c.

mand, without any deduction, defalcation, or abatement out of the same or any part thereof, in respect of any taxes, charges, assessments, payments, or other matter, cause, or thing whatsoever taxed, charged, or imposed, or to be taxed, charged, or imposed upon the premises aforesaid, or any of them, then and all such case, and at all times from thenceforth said indenture and all the term and estate thereby granted, and every clause and matter therein contained should cease, determine, and be utterly void to all intents and purposes, any thing in the said indenture contained to the contrary notwithstanding; and said defendant did in and by said indenture for himself, his heirs, executors, and administrators, covenant, promise, grant, and agree to and with said plaintiff, her executors, administrators, and assigns, in manner following, that is to say, that he said defendant, his heirs, executors, and administrators should and would well and truly pay, or cause to be paid unto said plaintiff, her executors, administrators, or assigns, the sum of twenty-five pounds at the time and in manner and form aforesaid, without any deduction or abatement out of the same, or any part thereof for taxes or otherwile, as aforesaid, as by said indenture, reference being thereto had will, amongst other things, more fully appear: And said plaintiff in fact saith, that although he the said plaintiff did, after the making of said indenture, and before the exhibiting the bill of her said plaintiff in this behalf, to wit, on the twenty-sixth day of December, in the year aforesaid, at, &c. aforesaid, demand payment of, and then and there request and require said defendant to pay her said plaintiff the said sum of twenty-five pounds in said indenture mentioned; yet the said defendant did not, when the said sum of twenty-five pounds was so demanded and required of him as aforesaid, pay, or cause to be paid unto her said plaintiff, the said sum of twenty-five pounds or any part thereof, but then and there wholly refused so to do, and suffered and permitted the same to remain and continue, and the same is still wholly due, owing, in arrear, and unpaid from said defendant to said plaintiff, contrary to the tenor and effect, true intent and meaning of the aforesaid indenture, and of the covenant of said defendant in that behalf made as aforesaid, to wit, at, &c. aforesaid; and so said plaintiff saith, that said defendant, although often requested, hath not kept his said covenant so by him made with said plaintiff as aforesaid, but hath hitherto wholly refused, and still doth refuse; damages fifty pounds; wit, &c.; pledges, &c.

V. LAWES.

LONDON, to wit. Michael Lawrence Pike, late of Preston, in the county of Devon, gentleman, and Walter Avent Mojs, late of Plymouth, in said county of Devon, shipwright, were summoned to answer unto John Jackson, in a plea that they keep with him their covenant by them made with said plaintiff, according to mortgage money and insurance, recites the first mortgage, and default and assignment to plaintiff

Declaration
C. B. in covenant by assign of mortgage, against mortgagee, non payment

COVENANT BY ASSIGNEE OF

ing to the force, form, and effect of a certain deed thereof made between them said defendants, one William Reskelly, one Daniel Curling, acting for and on behalf of himself, and Nathaniel Austin, partners in trade, under the firm of Curling and Austin, and the said plaintiff, and thereupon said plaintiff, by James Tucker his attorney, complains, that whereas by a certain deed made the eighth day of May, A. D. 1779, to wit, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap, between said defendants of the first part, the aforesaid W. R. of the second part, the said Daniel Curling, acting for and on behalf of himself, and the aforesaid N. A. his partner as aforesaid, of the third part, and the said plaintiff of the fourth part, reciting, amongst other things, that whereas by a certain indenture, tripartite, bearing date the thirtieth day of March, in the year 1773 aforesaid, and made or mentioned to be made between said defendants of the first part, said W. B. of the second part, said D. C. and N. A. of the third part; said defendants for the considerations therein mentioned, did grant, bargain, sell, and assign (with the privity, consent, and approbation of the said W. R. testified as therein mentioned), unto the said D. C. and N. A. in their actual possession, then being their executors, administrators, and assigns, all that brigantine or vessel theretofore called the Two Sisters, but then the Tabitha, commanded by the aforesaid W. N. with all and singular the masts, sails, sail yards, anchors, cables, cordage, ammunition, boats' tackle, apparel, furniture, and other appurtenances whatsoever thereunto belonging, to hold the said brigantine or vessel, and all other the thereby granted premises, with the appurtenances, unto the said D. C. and N. A. their executors, administrators, and assigns, upon trust, and to the intent, amongst other things, that in case the said defendants, their executors, and administrators should not at a certain time in said last-mentioned indenture specified, well and truly pay, or cause to be paid to said D. C. and N. A. their executors, or administrators, the sum of one hundred and fifty pounds in said last-mentioned indenture mentioned to be due and owing to said defendant, and all their reasonable costs, charges, and expences necessary or incident to the execution of the trusts in said indenture mentioned, that then said D. C. and N. A. their executors, or administrators should forthwith expose to sale by public auction, and for the best price that could be thereby obtained, sell, dispose of, convey, and deliver to any person or persons whomsoever the aforesaid brigantine or vessel, and all said premises by said indenture lastly mentioned, assigned, or meant or intended to be yearly assigned, with the appurtenances (subject nevertheless to a proviso for the redemption of the same premises), and also reciting that whereas said defendants had made default in the payment of said sum of one hundred and fifty pounds to said D. C. and N. A. contrary to the true intent and meaning of said in part recited indenture, which sum, with interest and incidental charges that accrued subject to the execution thereof, amounting to six pounds, made together the sum of one hundred and fifty-six pounds,

the ship to
C and N. A.
secure 150l.
interest, or
in default to sell.

the defendants
made default at
the day, and

MORTGAGOR OF A SHIP AGAINST MORTGAGEE.

pounds; and also reciting that said defendants or one of them had solicited said plaintiffs to lend and advance to them, or one of them, said sum of one hundred and fifty-six pounds, in order to prevent the sale of said brigantine, which solicitation said plaintiff had consented and agreed to, upon condition that they said defendants should each of them respectively assign and make over unto him said plaintiff all their and each of their several and respective share and interest of in and to said brigantine and vessel the *Tabitha*, together with all and singular the tackle, apparel, and appurtenances thereto belonging, as and for a collateral security for the repayment of said sum of one hundred and fifty-six pounds, and lawful interest, from the date of said deed of the eighth day of May, A. D. 1779 aforesaid, the said defendants D. C. and N. A. for the considerations therein mentioned, that is to say, said defendants for the purpose aforesaid, and for and in consideration of the sum of five shillings of lawful money of Great Britain, to each of them in hand well and truly paid by said plaintiff, and said D. C. acting as aforesaid, for and in consideration of the sum of one hundred and fifty-six pounds to him in hand paid by the said plaintiff at or on or before the enfealing and delivery of said now reciting deed, did, and each of them did by and with the privity, consent, and approbation of said W. R. testified by his being made a party to, and signing and sealing said now reciting deed, bargain, sell, assign, transfer, and set over unto said plaintiff, his executors, administrators, and assigns, all that the aforesaid brigantine or vessel called the *T.* together with all and singular the masts, sails, sail yards, anchors, cables, ropes, cords, guns, gunpowder, ammunition, small arms, tackle, apparel, boats, oars, and appurtenances, to said brigantine or vessel belonging, or in any wise appertaining, and also laid in part recited indenture, that is to say, said in part recited indenture of the thirtieth day of March, in the year 1779 aforesaid, and all the right, title, interest, property, possibility, claim, and demand whatsoever of them said defendants D. C. and N. A. or either of them, of, in, and to said brigantine or vessel, appurtenances, and indenture, to have and to hold all and singular the above-mentioned premises unto said plaintiff, his executors, administrators, and assigns, to his and their own proper use and uses, and as his and their own proper goods, chattels, and estates from thenceforth for ever, subject nevertheless to the proviso thereinafter contained for redemption of the same, that is to say, provided always that if said defendants, or either of them, their, or either of their heirs, executors, or administrators, should and would well and truly pay, or cause to be paid unto said plaintiff, his executors, administrators, or assigns, on or before the eighth day of May, which would be in the year of Our Lord 1780, the sum of one hundred and fifty six pounds, together with legal interest for the same, to reckon and be accounted from the day of the date of said last mentioned deed, and also all other sum and sums of money that should or might be then due to him or them, by and from said defendants, or either of them, their, or either of

solicited plaintiff
to lend the
the money
prevent
which
granted
an assign
the money
All the
assigned
plaintiff

COVENANT.—By ASSIGNEE of MORTGAGOR

their executors, or administrators, then and in such case such last-mentioned deed, and every thing thereinbefore contained, should utterly cease, determine, and be void, and said thereby assigned premises, and every part thereof, revert back to, and become the property of said defendants, their executors, administrators, or assigns, any thing therein above contained to the contrary thereof in any wise notwithstanding; and said defendants did, by said last-mentioned deed, covenant, promise, and agree to and with said plaintiff, his executors, administrators, or assigns, in manner following, that is to say, that they the said defendants, their heirs, executors, or administrators, some or one of them, should and would pay, or cause said sum of one hundred and fifty-six pounds, and interest thereon as aforesaid, and every part thereof, and all other the sum and sums of money that should or might be due or owing by them as aforesaid, to be paid unto said plaintiff, his executors, administrators, or assigns, at the time in said deed before limited for payment thereof, and said defendants did, by said last-mentioned deed, further covenant and agree that it should and might be lawful to and for said plaintiff, his executors, administrators, or assigns, from time to time, as he or they should think fit, to assure, or cause to be assured upon said brigantine or vessel at the proper costs and charges of them said defendants, their executors or administrators, a sum of money sufficient to cover said sum of one hundred and fifty-six pounds, and interest as aforesaid, to debit them in account for the same, and to retain the policy or policies of such assurance or assurances in the hands of him said plaintiff, his executors, or administrators, for the purpose aforesaid, as in and by said last mentioned indenture, reference being thereto had will, amongst other things, more fully and at large appear: And said plaintiff in fact further saith, that although, &c. [show performance on part of plaintiff], and protest the contrary on that of defendant, then go on with breach as follows] the said plaintiff in fact saith, that said defendant did not, nor did either of them, on or before the eighth day of May, which was in the year 1760 aforesaid, pay, or cause to be paid to said plaintiff, said principal sum of one hundred and fifty-six pounds in said last-mentioned indenture mentioned, or any part thereof, but wholly neglected so to do, and therein wholly failed and made default, and the said sum of one hundred and fifty-six pounds is still wholly unpaid unto him said plaintiff, contrary to the tenor and effect of said last-mentioned deed, and of the aforesaid covenant of said defendant in that behalf made as aforesaid, to wit, at, &c. aforesaid: And said plaintiff in fact further saith, that although a large sum of money, to wit, the sum of pounds, for legal interest on said principal sum of one hundred and fifty-six pounds in said last-mentioned indenture, reckoned and accounted from the day of the date of said last-mentioned deed, and ended on the day and year last aforesaid, on that day in the year last aforesaid, became due and payable by deed mentioned, for a certain space of time, to wit, for the space of years, and a few arrears of interest.

Covenant from
defendants to
pay the mort-
gage money.

Covenant from
defendants, that
plaintiffs might
have and re-
possession as
security.

Breach in non-
payment of the
mortgage mo-
ney,

and a few ar-
rears of interest.

mentioned deed, and the tenor and effect thereof, to wit, at, &c. afore-
 said, whereof said defendant had notice; yet said plaintiff in fact
 further saith, that said defendant did not, nor did either of them,
 in the day and year last afore-^{For a}said, or at any other time ^{sum for}whatsoever,
 pay the said sum of . . . pounds so due to said plaintiff for interest
 on said sum of one hundred and fifty-six pounds, in said last men-
 tioned deed mentioned as afore-^{insurance.}said, or any part thereof to said
 plaintiff, but wholly neglected so to do, and therein wholly failed
 and made default, and the same and every part thereof is still wholly
 due, owing, in arrear, and unpaid to him said plaintiff, contrary to
 the tenor and effect of said last-mentioned deed, and of the cove-
 nant of the said defendants in that behalf made as afore-^{Conclusion}said, to wit,
 at London, &c. afore-^{sum for}said; and said plaintiff in fact further says,
 that between the day of the making said last-mentioned deed, and
 the afore-^{insurance.}said eighth day of May, A. D. 1780 afore-^{Conclusion}said, he said
 plaintiff did, under and by virtue of said last-mentioned deed, as-
 sure, and cause to be assured on the afore-^{Conclusion}said brigantine or vessel,
 divers sums of money, each and every of which was sufficient to
 cover said sum of one hundred and fifty-six pounds in said last-
 mentioned deed specified, and interest thereon as afore-^{Conclusion}said, and on
 that occasion did necessarily lay out and expend divers sums of
 money, in the whole amounting to a large sum of money, to wit,
 the sum of seventy-one pounds two shillings of lawful, &c. for
 which he debited said defendants in account, according to the tenor
 and effect of said last-mentioned deed, whereby and by means
 whereof said defendants became liable to pay to said plaintiff said
 sum of seventy-one pounds two shillings, whereof said defendants
 afterwards, to wit, on the day and year last afore-^{Conclusion}said, at, &c.
 afore-^{Conclusion}said had notice: Yet said plaintiff in fact further saith, that
 said defendant did not, on, &c. (as in breach in non-payment of
 interest); and so said plaintiff saith, that said defendants, although
 often requested, have not kept the said covenant so by them made
 with him said plaintiff as afore-^{Conclusion}said, but have, and each of them
 hath broken the same, and to keep the same with said plaintiff
 have and each of them hath hitherto wholly refused, and still do,
 and each of them doth refuse so to do; wherefore said plaintiff
 saith he is injured, and hath sustained damage to the value of two
 hundred and thirty-nine pounds, and therefore he brings his suit,
 and he also brings into court here the said license, before in part
 recited deed, &c. sealed with the seal of said defendants, and bear-
 ing date the day and year in that behalf above-mentioned.

V. LAWES.

ON INDENTURES.

Declaration in
 want for
 payment of
 which
 To com-
 mence when de-
 clant entered
 the said pre-
 mises, &c. aver-
 ment, did enter,
 the said
 of the
 &c.

MIDDLESEX, *ff.* James Moffatt, late of, &c. and Rad-
 cliffe Moffatt, late of L. were sworn to answer unto Anna
 Moffatt in a plea that they keep with her the covenant made be-
 tween said plaintiff and said defendants; and thereupon said plain-
 tiff, by D. Jennings her attorney, complains that whereas by a
 certain indenture made the thirtieth of January 1766, to wit, at
 Westminster, in the county of Middlesex, between said plaintiff
 of the one part, and said defendants of the other part (which
 said indenture, sealed, &c. *profert. in curia*) [recite the indenture,
 which sets forth that plaintiff's husband, in his lifetime, was in
 right of his wife possessed of several messuages, &c. and that he
 mortgaged same, and that he made his will, and devised to
 plaintiff an annuity of twenty-five pounds payable out of all said
 messuages, &c. and devised all the rest and residue of his real and
 personal estate to the defendants, and that he died the sixth of July
 1746, without altering his will, and without paying off the money
 due by virtue of said mortgages, and that said mortgagees had
 been in possession of the premises, and received rents, &c. and not
 accompted, &c. and reciting that disputes had arisen between the
 parties and the mortgagees, for the ending of which said plaintiff
 had agreed with said defendants to assign to them all her interest
 in the premises, subject nevertheless to an annuity of sixty pounds
 in lieu of said annuity of twenty-five pounds; and that in con-
 sideration thereof, said defendants had agreed to pay unto said
 plaintiff an annuity of sixty pounds, as and for full satisfaction for
 all her right, &c. and the said indenture witnessed that said plain-
 tiff, in consideration, &c. &c. did assign all her right, title, inter-
 est, equity of redemption, &c. of said premises, to have and to
 hold, &c. to the use and behoof of said defendants, as tenants in
 common, subject to the said annuity of sixty pounds; and said
 plaintiff, for the considerations aforesaid, nominated defendants,
 her attorneys, to ask, demand, receive, &c. and then follows the
 covenant, for the breach of which this action was brought; "and
 said defendants, for the considerations aforesaid, do hereby for
 themselves, their heirs, executors, and administrators, covenant,
 promise, and agree, to and with said plaintiff, her executors, ad-
 ministrators, and assigns, in manner and form following, that is
 to say, that said defendants, their heirs, executors, and admini-
 strators, shall and will well and truly pay, or cause to be paid to
 said plaintiff and her assigns, for and during the term of her na-
 tural life, the yearly sum of sixty pounds of lawful money of
 Great Britain, by four equal quarterly payments in the year, the
 first of said quarterly payments to begin and be made within three
 months next after said defendants, or either of them, or either of
 their heirs, executors, or administrators, shall have obtained pos-
 session of said messuages, lands, and tenements, or any part there-
 of, which shall be sufficient to pay said annuity:" then proceed
 as follows]: as by the said indenture (relation being thereto had)
 will amongst other things more fully appear: And said plaintiff in

defendant.

fact

COVENANT.—PLEA, PERFORMANCE.

fact says, that said defendants, after the making of said indenture, to wit, on the twenty-fifth day of December A.D. 1767, at W. aforesaid, in said county of M. obtained possession of a sufficient part of said messuages, lands, and tenements in said indenture mentioned, to pay the said annuity by virtue whereof, and according to the tenor of said indenture, they then and there became, and from thence hitherto have been, and still are liable to pay the annuities aforesaid to said plaintiff, according to the tenor and effect of said indenture, and of the aforesaid covenant of them said defendants in that behalf made as aforesaid, to wit, at, &c. aforesaid; and although she said plaintiff always, from the time of the making of said indenture, hitherto hath well and truly performed and fulfilled all things contained in said indenture on her part and behalf to be performed and fulfilled, according to the true intent and meaning of said indenture, to wit, at, &c. aforesaid; yet protesting that said defendants have not, nor hath either of them performed or fulfilled any thing in said indenture contained on their part and behalf to be performed or fulfilled; she said plaintiff in fact further saith, that on the twenty-fourth day of June, A. D. 1775, four hundred and fifty pounds for seven years and one-half of another year of said annuity or yearly sum of sixty pounds, ending on that day in the year last aforesaid, became due and payable from said defendants to said plaintiffs, and still are in arrear and unpaid, contrary to the tenor and effect of the said indenture, and of the covenant aforesaid of them said defendant in this behalf made as aforesaid, to wit, at, &c. aforesaid; and so said plaintiff saith, that said defendants (although often requested by said plaintiff) have not, nor hath either of them kept their said covenant so by them made with said plaintiff as aforesaid, but have broken the same, and to keep with said plaintiff have, and each of them hath hitherto wholly refused, and still refuses so to do; wherefore said plaintiff saith she is injured, and hath sustained damage to the value of four hundred and ninety pounds; and therefore she brings her suit, &c.

J. MORGAN.

PLEAS IN COVENANT.

JONES, } AND the said John, by T. Edwards his attorney,
at suit of } comes and defends the wrong and injury, when, &c.
ROGERS. } and as to the breach of covenant first above assigned,
and by the said declaration above supposed to have been made by
him said John, he the said John says, that the said Milward ought
not to have or maintain his aforesaid action in respect of such pre-
mises against him the said John, because he says, that the said
blowed off by wind and tempestuous weather; and although plaintiff had used all
repair, &c. same, &c. yet sufficient time for that purpose is not elapsed. 3d, That
cell dung, &c. 4th, That he carried dung, &c. off the premises by the licence of plaintiff.

John

COVENANT.—PLEA, PERFORMANCE IN DENIAL.

Conclusion
country.
Plea.

John hath always, from the time of the making of the aforesaid indenture hitherto in a fair and just manner maintained, repaired, upheld, and kept all the said buildings in the said breach of covenant first above assigned mentioned, with thatch, hedges, ditches, together with the glass windows in good repair, according to the form and effect of the aforesaid indenture, and the covenant of him said John in that behalf made as aforesaid, to wit, at Oswestry aforesaid; and of this he puts himself upon the country, &c.: And for further plea as to so much of the said breach of covenant first above assigned, and by the declaration supposed to have been made as relates to the thatch of the said buildings in the said breach mentioned, he the said John, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Milward ought not to have or maintain his aforesaid action in respect of such premises against him; because he says, that before the exhibiting of the bill of the said Milward against him the said John in this behalf, to wit, on the day and year in the said breach of covenant first above assigned mentioned, the said thatch of the said buildings in the said breach mentioned was by and through the force and violence of the wind and tempestuous weather, blown off, damaged, and destroyed; and the said buildings did thereby, and not by or through any default of the said John in the maintaining, repairing, upholding and keeping thereof, become ruinous and in decay in the thatch thereof, as in the said breach of covenant first above assigned is alledged; whereof he the said Milward afterwards, and before the exhibiting of the bill of him the said Milward, to wit, on the day and year aforesaid, had notice, to wit, at Oswestry, in the said county of Salop: And the said John in fact further saith, that immediately after the said thatch had been blown off as aforesaid, he hath used all due diligence in and about the repair of the said buildings, in respect to the aforesaid thatch thereof, and hath endeavoured, as much as in him lay, to repair and amend the same in that particular, but he hath not as yet been able so to do, nor hath a sufficient or reasonable and proper time for that purpose as yet elapsed; and this he the said John is ready to verify: wherefore he prays judgment, if the said Milward ought to have or maintain his aforesaid action in this respect against him, &c.: And as to the said breach of covenant lastly above assigned, and by the said declaration supposed to have been made by the said John, he the said John says, that the said Milward ought not to have or maintain his aforesaid action in respect of such premises against him the said John; because he says, that he the said John did not, at any or either of the said days or times in the said breach of covenant lastly above assigned mentioned, carry off or from the said demised premises any of the hay, straw, fodder, mud, manure or compost which arose, grew, or was made upon the said demised premises in manner and form as the said Milward hath above thereof complained against him the said John; and of this he puts himself upon the country,

Verification.
Plea.

COVENANT.—PLEA, CONDITION, PRECEDENT.

country, &c. : And for further plea as to the said breach of covenant lastly above assigned, and by the said declaration supposed to have been made by said John, he the said John, by like leave, &c. says, that the said M. *actio non* ; because he says, that he the said John, at the several times in the said declaration in that respect mentioned, by the leave and licence of the said Milward to him the said John for that purpose first given and granted, did carry off and from the said demised premises in the said declaration mentioned, the said hay, straw, fodder, mud, manure, and compost in the said breach of covenant lastly above assigned mentioned, and laid and bestowed the same elsewhere than upon the demised premises, to wit, at Oswestry aforesaid, in the said county of Salop ; and this he the said John is ready to verify : wherefore he prays judgment if the said Milward ought to have or maintain his aforesaid action in respect of the said breach of covenant lastly above assigned against him, &c. W. BALDWIN.

Country.
4th Plea.

Verdict.

WAPSHOTT } AND said defendant, by C. H. his attorney,
at suit of } comes and defends the wrong and injury, when,
WILSON. } &c. and as to said breach of covenant above assigned, says, *actio non* ; because he says, that the said defendant, after the making of said articles of agreement, and before the commencing of the first week of said twenty weeks in said declaration mentioned, to wit, on, &c. and on divers other days and times between that day and the commencement of the first week of the twenty weeks in said declaration mentioned, to wit, at, &c. aforesaid, did request said plaintiff to recommend him said defendant to her and her late husband's customers, to work for them, and to go with said defendant for that purpose, to do which said plaintiff then and there, to wit, on those respective days and times, refused, and from thence hitherto hath refused, to wit, at, &c. aforesaid, contrary to the tenor of the aforesaid articles of agreement, and of the covenant of said plaintiff, being a condition precedent to the performance of the covenant of said defendant, he ought not to be bound to the performance of his covenant until said plaintiff hath in all things, performed and fulfilled his aforesaid covenant ; and this, &c. : wherefore, &c. if, &c.

Plea of condition precedent to the action of covenant ; that plaintiff was bound in a covenant to defendant, which was a condition precedent to the performance of defendant's covenant, upon which this action is brought, and that defendant requires plaintiff to perform same, which he refused.

SUGAR } AND said plaintiff, by A. B. his attorney, comes
at suit of } and defends the wrong and injury, when, &c. and
WHITE. } saith, that said indenture is not his deed, in manner and form as said plaintiff hath above thereof complained against him ; and of this he puts himself upon the country, &c. : And for further plea as to the breach of covenant first above assigned, with respect to the said forty-five pounds of the rent aforesaid being in arrear and unpaid, said defendant, by leave, &c. saith, that said plaintiff, *actio non* ; because he saith, that said plaintiff, after the death of, &c. the lessor in said declaration mentioned, and before said

1st, *Non est factum* ; 2d, exception by plaintiff of the whole premises ; 3d, rent not in arrear.

COVENANT.—PLEA IN EXCUSE OF PERFORMANCE.

said forty-five pounds in said declaration mentioned, or any part thereof, became due and in arrear, and before the feast of the Annunciation of the Blessed Virgin Mary, A. D. 1772, to wit, on the first day of January, A. D. 1771, to wit, at, &c. aforesaid, entered into and upon the said demised premises, with the appurtenances, in and upon the possession of said defendant thereof, and expelled said defendant out of and from the possession and occupation thereof, and kept and continued him to thereout expelled from thence until the end and expiration of said term of thirty years to him thereof demised as in said declaration mentioned; and this he the said defendant is ready to verify: wherefore he prays judgment if said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.: And for further plea as to the breach of covenant first above assigned in the non-payment of said forty-five pounds of the rent aforesaid, said defendant saith, that said plaintiff, *actio non*; because he saith, that said forty-five pounds of the rent is not, nor is any part thereof in arrear, in manner and form as said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.

This plea of *rents in arrear* in action of covenant is bad, though it is a good plea to an action of debt for rent, *vide* Hare and Saville, 1. Brown. 19, and Warner and Theobald, Cowper, 588.

Plea of non in-
fringement (a) in co-
venant.

AND said defendant, by his attorney, comes and defends the wrong and injury, when, &c.; and saith, that he hath not broke the said covenants in said declaration mentioned, or any or either of them, in manner and form as said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.

This plea is given by stat. 11. Geo. I. c. 30. s. 43. to the London and Royal Exchange Assurance Offices.

(a) This plea is too general and too negative, namely, *et sic tenet conventionem, et non infringit, &c.* do not make good issue, R. 1. Lev. 183. S. C. 2. Kid. 51. S. C. 1. Sid. 289. 3. Lev. 19; but it shall be aided after verdict, 1. Lev. 185. 1. Sid. 289.

as to eight
pounds, parcel
of, and to
the residue
of the sum

HAMARD } AND said defendant, by A. B. his attorney,
at suit of } comes and defends the wrong and injury, when,
MATTOCKS. } &c. and as to said breach of covenant above as-
signed, as to eight pounds, parcel of said sum of nine pounds in
said declaration mentioned, says, that said plaintiff, *actio non*, to
recover any more or greater damages than said sum of eight
pounds on occasion of said breach of covenant in this behalf as to
the said eight pounds against said defendant; because he saith, that
he said defendant, at the time when said eight pounds, parcel of
said sum of nine pounds, became due and payable from said de-
fendant to said plaintiff, to wit, at, &c. aforesaid, was, and from
thence hitherto hath been, and still is there ready to pay to said
plaintiff

PLEA, TENDER, SET-OFF. IN EXCUSE, &c.

plaintiff said eight pounds, and that after the time when said eight pounds became due and payable, and before the commencement of this suit, to wit, on, &c. at, &c. aforesaid, he said defendant offered to pay, and then and there tendered to said plaintiff said sum of eight pounds, parcel of said sum of nine pounds, but that said plaintiff then and there wholly refused to receive the same; and this, &c.: wherefore, &c. if said plaintiff ought to have and maintain his aforesaid action thereof against him, to recover any more or greater damages than said sum of eight pounds on occasion of said breach of covenant above assigned as to said sum of twenty shillings, residue of said sum of nine pounds in said declaration mentioned, he said plaintiff says, *actio non*; because he says, that said plaintiff, on the day of levying the plaint of him said plaintiff against said defendant, and before, was, and still is indebted to said defendant in more money than said sum of twenty shillings, residue of said sum of nine pounds due and owing from said defendant to said plaintiff, to wit, in the sum of five pounds for money, &c. &c. which said sum of money so due and owing from said plaintiff to said defendants, exceeds the damages sustained by said plaintiff on occasion of said breach of covenant above assigned, as to said sum of twenty shillings, residue of said sum of nine pounds in said declaration mentioned, and out of which said sum of money so due and owing from said plaintiff to said defendant, he said defendant is ready, and hereby offers to set-off and allow to said plaintiff so much money as the damages by him sustained on occasion of said breach of covenant above assigned in this behalf as to said twenty shillings amount to; and this, &c.: wherefore, &c. if, &c.

Drawn by MR. WARREN.

AND said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, *actio non*; because protesting that said declaration, and the matters therein contained are not sufficient in law, &c. and to which said defendant is not obliged, nor by the law of the land bound to make any answer; nevertheless for plea in this behalf said defendant says, that after said vessel departed and set sail from R. Bay aforesaid, with said logwood and passengers, towards and for the island of St. Simons in Georgia, and after the decease of said George (the former master, who was stated to have died) in that passage in said declaration mentioned, that is to say, on the tenth of September in the year aforesaid, the aforesaid schooner arrived near unto the island of St. Simons, that is to say, within three leagues thereof, and said R. M. in said declaration mentioned, taking upon himself the command of said schooner, did then and there intend, and would then have called at said island with said schooner if the wind and weather would have permitted plaintiff to have carried said schooner as pilot in said island, and said R. M. then and there offered to permit said plaintiff to pilot said schooner into said island, according to the aforesaid covenant in that behalf made, but the said plaintiff,

Plea to declaration of covenant against owner of a ship, their captain not calling particular that he offered to call, permit to pilot which he offered to do, because of bad weather; and wishes that captain refused to permit him

PLEA IN DENIAL.--IN EXCUSE, &c.

plaintiff, by reason of the violence of the wind and tempest, durst not nor would take upon himself to carry said schooner, as pilot, into said island, but then and there refused so to do; without this that said R. M. in said declaration mentioned, did in anywise hinder or refuse to permit said schooner to be piloted or carried into said island of St. Simon, in manner and form as said plaintiff hath in his said declaration above allcuded; and this, &c.; wherefore, &c.

And to declar-
in covenant,
of lesser
assignee
that
did not
to them by
ment.
That before
rent became
defendant
signed pre-
C. P. to one

AND said J. W. M. and T. Taylor, by J. L. their attorney, come and defend the wrong and injury, when, &c. and say, that said plaintiff ought not to have or maintain his aforesaid action thereof against him; because they say, that all the estate, right, title, interest, and term of years then to come and unexpired, properly, claim, and demand whatsoever of said C. P. of, in, and to said demised premises, with the appurtenances, by assignment thereof then and there duly made, did not come to and vest in said defendant in manner and form as said plaintiff hath above thereof declared against them; and of this they put themselves upon the country: And for further plea as to said supposed breach of covenant in said declaration mentioned, they the said defendants, by leave, &c. say, that said plaintiff, *actio non*; because they say, that before said rent in said declaration mentioned, or any part thereof became in arrear or payable, to wit, on first of January A. D. 1778, at, &c. aforesaid, they said defendants granted and assigned to said C. P. in said indenture mentioned, all their right, title, interest, and term of years which they said defendants then had to come of and in said demised premises, with the appurtenances; by virtue of which said assignment said C. P. afterwards, to wit, on same day and year last aforesaid, entered into said demised premises, with the appurtenances, and became and was, and from thence continually until said rent in said declaration mentioned became due, and afterwards continued to be possessed thereof; and this said defendants are ready to verify: wherefore, &c. if, &c.

W. BALDWIN.

to action of
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of agree-
ment.
Non est factum,
ad, That
said to H. C.
plaintiff's
for the plain-
the, all the
money due for
the, &c.

AND said defendant, by his attorney, comes and defends the wrong and injury, when, &c. and saith, that said plaintiff, *actio non*; because he says, that said indenture is not his deed; and of this he puts himself upon the country, &c.: And said defendant, for further plea in this behalf, by leave, &c. saith, that said plaintiff, *actio non*; because he says, that after the making of said articles of agreement, to wit, on, &c. at, &c. he said defendant paid to said plaintiff all the money due to said plaintiff for said salt, to wit, by delivering from time to time all the money so due to said plaintiff for said salt to one H. C. by the direction of, and at the special instance and request of said plaintiff; and this he said

defen-

PERFORMANCE, REPLICATION, AND EXCUSE, &c.

defendant is ready to verify: wherefore, &c. if, &c.: And for 3d, That further plea, &c. by leave, &c. *actio non*; because he saith, that after the making the said articles of agreement, to wit, on, &c. he said defendant paid to said plaintiff all the money due for said salt, according to the form and effect of said articles; and this, &c.; wherefore, &c. if, &c.

And said plaintiff, as to said plea of said defendant by him secondly above pleaded in bar, says, that he, by reason of any thing by said defendant in that plea above alledged, ought not to be barred from having and maintaining his aforesaid action against him: because he saith, that said defendant did not, after the making of the said articles of agreement, pay to him said plaintiff all the money due for said salt, in manner and form as said defendant hath in his said plea above alledged; and this he prays may be enquired of by the country, &c.; And said plaintiff, as to the plea of said defendant by him lastly, &c. (same replication).

AND said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c.; and says, that said plaintiff, *actio non*; because as to said breach of covenant above assigned, in that said defendant did not, at his own costs and charges, as soon as conveniently might be, put said messuage and tenement, and all or any of the outbuildings by that indenture demised in good and sufficient tenantable order and repair, he saith, that he said defendant did, at his own costs, &c. repeat the words affirmatively, according to the form and effect of said indenture, and of said covenant of said defendant in that behalf made as aforesaid; and of this he puts himself upon the country, &c.: And as to the said breach of covenant above assigned in this, that he said defendant hath not kept, &c. he said defendant saith, &c. that he hath kept, &c. &c.; and of this he puts himself upon the country, &c.: And for further plea in this behalf, as to said breach of covenant above assigned in this, to wit, that said defendant hath not kept said messuage or outhouses by said indenture demised in good and sufficient tenantable order and repair, said defendant, by leave, &c. says, *actio non*; because he saith, that said plaintiff during said term, to wit, on, &c. and on divers other days and times during said term, unjustly, injuriously, and wilfully pulled down, broke down, broke to pieces, prostrated, and destroyed, and knowingly and wilfully permitted and suffered to be purposely pulled down, &c. divers parts of said messuage and outbuildings by said indenture demised, and that he said indenture demised, and that he said defendant did, at all times during said term, keep said messuage and tenement, and all and every said outbuildings, other than and except such parts thereof as were injuriously, purposely, and wilfully pulled down, &c. by said plaintiff aforesaid, and except as in said indenture is excepted, in good and sufficient tenantable order and repair, according to the form and effect.

REPLICATION.—PLEA, CONDITION PRECEDENT.

effect of the said indenture, and of the covenant of the said defendant in that behalf made as aforesaid; and this he the said defendant is ready to verify; wherefore, &c. if, &c.

Replication to the 3d plea, making issue on the pulling down.

AND the said plaintiff as to the said plea of the said defendant lastly above pleaded as to the said breach of covenant assigned in this behalf, &c. saith, that he the said plaintiff by any thing by the said defendant in that plea alledged ought not to be barred from having his aforesaid action thereof against him; because he saith, that the said plaintiff did not, at any time during the said term, injuriously and wilfully pull down, &c. or knowingly and wilfully permit and suffer to be purposely pulled down, &c. any part of the said messuage and out-buildings by the said indenture demised, in manner and form as the said defendant hath above in his said plea in that behalf alledged; and this he prays may be enquired of by the country, &c.

Plea, that plaintiff covenanted to put premises in repair from the first, and provide timber, &c.; that he did not, by reason whereof premises were not continued in repair.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the breach of covenant by the said plaintiff in his said deed assigned, he the said defendant says said plaintiff *actio non*; because he says, that the said plaintiff by the said indenture mentioned, by his said deed mentioned, sealed with his seal, and to the court of our lord the king now here shewn, did covenant and agree to and with the said defendant to put the said dwelling house in good repair, and to build walls for the said stable and to provide timber for the roof, as by the said indenture more fully appears; yet the said plaintiff did not, at any time before the exhibiting of the said bill, put the said dwelling-house in good repair, and build the walls of the said stable, and provide timber for the roof, according to the form and effect of his said covenant in that behalf made as aforesaid, and by means thereof, and by and through the neglect and default of the said plaintiff in that behalf, he the said defendant was hindered and prevented from maintaining and keeping in good repair the said dwelling-house and stable, and every part thereof, during the said term; and this he is ready to verify, &c.; wherefore, &c. if, &c.

Plea to breach of covenant for not repairing, that plaintiff levied a distress in the premises for rent, the charges of which he ought to have borne; that defendant paid them in satisfaction of the default in repairing, in consideration whereof plaintiff had discharged defendant from all damages for the want of such repair.

ACTIO NON; because he says, that after the making of the said indenture of demise, and before the day of exhibiting the bill of the said plaintiff, that is to say, on, &c. he the said plaintiff had caused to be made a distress upon divers goods and chattels of the said defendant for rent then in arrear and due to him the said plaintiff for the said premises, with the appurtenances, so demised to the said defendant as aforesaid, the charges of which said distress, so amounting in the whole to the sum of four pounds, the said plaintiff ought to have paid and borne, that is to say, at, &c.

aforesaid;

IN DISCHARGE.

aforesaid; and afterwards, to wit, on the same, &c. at, &c. the said defendant did pay the charges of the said distress, which was the right of the said plaintiff to pay, in full satisfaction of the defects of the said repair, and of the damages he the said plaintiff had received by the said defendant's not putting in repair the said buildings so demised as aforesaid, according to the form and effect of the said covenant in that behalf; in consideration whereof the said plaintiff then and there did acquit and discharge the said defendant from all trespasses and damages had and received by his the said defendant's not putting in repair the said premises so demised as aforesaid; and this he is ready to verify; wherefore, &c. if, &c.

AND the said William, by Charles Harrison his attorney, comes and defends the wrong and injury, when, &c. and says, - that the said Thomas ought not have his aforesaid action thereof maintained against him; because he says, that in and by the said indenture in the said declaration mentioned, it was and is amongst other things covenanted and agreed, that the said Thomas, his executors, administrators, and assigns, should and lawfully might, from time to time, and at all times from and after default should happen to be made in payment of the said sum of two thousand pounds, or of the interest thereof, or any part thereof, contrary to the true intent and meaning of the said *proviso* and covenant for payment of the same in the said indenture mentioned, peaceably and quietly enter, and come into and upon, and have, hold, and enjoy all and every the said several messuages or tenements, lands, hereditaments, and all and singular other the premises thereby granted and demised, or mentioned, or intended so to be, and every part and parcel thereof, with their and every the appurtenances, and receive and take the rents, issues, and profits thereof, to his and their own use and benefit for and during all the residue and remainder of the said term thereby granted, without any let, suit, trouble, or interruption of or by any person or persons whomsoever, as by the said indenture (reference being thereunto had) will more fully and at large appear: And the said William further saith, that default having been made in payment of the said sum of two thousand pounds in the said indenture mentioned, he the said Thomas, by virtue and in pursuance of the said last-mentioned covenant in the said indenture mentioned, afterwards, and before the issuing forth the original writ of the said Thomas against the said William, to wit, on the first day of February, in the year of Our Lord 1793, to wit, at the parish of Nutfield, in the county of Surry, did enter and come into and upon the said premises by the said indenture mortgaged and demised, and hath from thence hitherto peaceably and quietly occupied, possessed, and enjoyed the same, and received, and taken the rents, issues, and profits thereof to his own use and benefit, without any let, suit, trouble, or interruption of or by, or from the said William Bryant or any other person or persons whomsoever, and thereby released, ex-

Plea, the mortgage contained a covenant that in default in payment of money at any day, mortgage might be entered and the debt being made mortgagee of the premises, and there by released the defendant.

IN DISCHARGE.—REPLICATION.—PLEA, RELEASE.

onerated, and discharged the said William from the payment of the said sum of two thousand pounds in the said indenture and in the said declaration mentioned, or any part thereof; and this he the said William is ready to verify; wherefore he prays judgment if the said Thomas ought to have or maintain his aforesaid action thereof maintained against him, &c.

C. RUNNINGTON.

This is clearly a sham plea, as mortgage deed, by containing an independent covenant, for payment of the mortgage money, thereby affords a separate and distinct remedy; and where a deed contains several remedies a party

has a right to take all or any at his will till he is satisfied his demand.

Plaintiff being ruled to abide by this plea withdrew it, and pleaded the general issue.

And the said Thomas, as to the said plea of the said William by him above pleaded in bar, saith, that he, by reason of any thing therein alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says, that he the said Thomas did not enter and come into and upon the said premises by the said indenture mortgaged and demised, and peaceably and quietly occupy, possess, and enjoy the same, and receive and take the rents, issues, and profits thereof to his own use and benefit, in manner and form as he the said William hath above in his said plea alledged; and of this he the said Thomas puts himself upon the country.

W. BALDWIN.

N. B. When plaintiff replied he gave defendant a rule to abide by his plea, or plead such other as he would abide by, upon which he withdrew the above and pleaded the general issue. The cause was tried at the first sittings in Trinity Vacation 1793, before the chief Justice of C. B. and plaintiff recovered a verdict for his whole demand.

Though this issue seems to be an immaterial one, on an idea that the remedy on the covenant for payment of mortgage money, is independent of the matter traversed in the replication, yet the fact being against the plea, and it being therefore false as well as immaterial, it should seem that a verdict for the plaintiff will be good, though a verdict for defendant would not. Noy 56. Cro. Eliz. 773. 2. Jones 184. 4. Ba. Abr. 58.

ACTIO NON; because he saith, that true it is that the said plaintiff demised to the said defendant the said demised premises, with the appurtenances, in manner and form as the said plaintiff hath by his said declaration above alledged; nevertheless for plea the said defendant says, that during the said term, to wit, on, &c. he the said defendant, at the special instance and request of the said plaintiff, surrendered to the said plaintiff the said demised premises, with the appurtenances, and all the estate, interest, right, title, and term of years of him the said defendant therein then to come and unexpired; in consideration of which surrender he the said plaintiff, on the same day and year aforesaid, at C. aforesaid, acquitted and discharged the said defendant from all damages arising and accruing to him the said plaintiff by reason of the breach of, covenant

PLEA OF PERFORMANCE GENERALLY BY ASSIGNEE.

covenant contained in the said demise on the part and behalf of the said defendant to be performed and fulfilled; and this he is ready to verify; wherefore he prays judgment if, &c.

AND as to the said breach of covenant above assigned the said defendant says *actio non*; because he says, that he the said defendant became assignee of the said premises, with the appurtenances, until the end and expiration of the said term of ninety-nine years granted by the said indenture, brought there into court as aforesaid, and well and sufficiently repaired, upheld, maintained, sustained, and kept up at his own proper costs and charges, all and singular the said demised premises, and all the hedges, ditches, and fences thereof, with the appurtenances, in all manner of needful and necessary reparations whatsoever, according to the form and effect of the said indenture, and of the covenant therein contained; and of this he puts himself upon the country, &c.

ACTIO NON; because, &c. as to the said breach of covenant above assigned, in this, that all the hedges and fences of and belonging to the said demised premises, with the appurtenances, were, during all that time in the said deed in that behalf mentioned, ruinous, broken down, prostrated, and in great decay, for want of needful and necessary reparation thereof, and all the ditches of the aforesaid demised premises, with the appurtenances, were, during all the time aforesaid, in the said deed in that behalf mentioned, foul, ruinous, and filled up with mire and dirt, and in great decay, for want of scouring and cleansing thereof, the said defendant says, that the said barn in part of the said demised premises, with the appurtenances, or any part of the same barn, was not, during all or any part of the time in the said deed in that behalf mentioned, ruinous, broken down, and in great decay in the tiling, slating, and thatching, or in the doors, floors, or window-frames thereof, or any of them, or in every or any other part in particular thereof; nor were all or any of the gates, rails, stiles, hedges, or fences, of or belonging to the said demised premises, with the appurtenances, during all or any of the time in the said deed in that behalf mentioned, ruinous, broken down, prostrate, and in great decay for want of needful and necessary repairing and amending thereof; nor were all or any of the ditches in the said demised premises, with the appurtenances, during all or any part of the time in the said deed in that behalf mentioned, foul, ruinous, filled up with mire and dirt, and in great decay for want of scouring and cleansing thereof, in manner and form as the said plaintiff hath in his said deed above alleged; and of this he puts himself upon the country, &c.

Plea in
that the
kept the
see in
part, plea
assignee.

Another plea (a
breach of cove
nant for
repairing). On
premises were
in good repair
and not ruinous.

PLEA IN DISCHARGE.—TENDER.

the day of exhibiting of the bill of the said plaintiff, and before, was and still is indebted to the said defendant in more money than is due and owing from the said defendant to the said plaintiff upon the several breaches of covenant in the said declaration mentioned, to wit, in the sum of five hundred pounds, for so much money before that time had and received, &c. and which said sum of money so due and owing from the said plaintiff to the said defendant, exceeds the damage sustained by the plaintiff on occasion of the said several breaches of covenant in the said declaration mentioned, and out of which said sum of money so due and owing from the said plaintiff to the said defendant, he the said defendant is ready, and hereby offers to set off and allow to the said plaintiff so much money as the said damages sustained by him on occasion of the said several breaches of covenant in his declaration mentioned amount to; and this, &c. ; wherefore, &c. if, &c.

EDWARD BEARCROFT.

by the directors of the Sun-Fire Office to an action of covenant on a policy of assurance from fire, that the goods, &c. were not burnt by fire in the said house; and that plaintiff fraudulently set the house on fire.

FIRST, *non est factum*: Second, *actio non*; because they say, that the said household goods, utensils, stock, and goods in pledge, besides plate and jewels, wearing apparel, china, and glass, in the said declaration mentioned, and by the said plaintiff above supposed to have been burnt, consumed, and destroyed by fire in the said dwelling-house, were not, nor were any part thereof burnt, consumed, or destroyed by fire, in the said dwelling-house, in manner and form as the said plaintiffs have in their said declaration above alleged; and of this he puts himself upon the country, &c. : Third, *actio non*; because they say, that the said dwelling-house at the said time when, &c. in the said declaration mentioned, was fraudulently set on fire by the said plaintiff with intent to defraud them the said defendants; and this they are ready to verify; wherefore, &c. if, &c.

F. BULLER.

to covenant, non-pay- AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that true it is that eighteen pounds of the rent aforesaid, on the demise in the said declaration mentioned, on the said day of , in the year of Our Lord , were in arrear, and yet are unpaid; but the said plaintiff further says, that the said plaintiff *actio non* to recover any more damages in this behalf than the said eighteen pounds; because he says, that the said defendant on the said, &c. and for a convenient time, to wit, for the space of one hour before the going down of the sun on that day, at the aforesaid dwelling-house mentioned, parcel of the said premises, was ready, and then and there offered to pay to the said plaintiff the said sum of eighteen pounds, according to the form and effect of the said covenant; and the said plaintiff, or any other person in that behalf, was not then and there ready to receive from the said defendant the said sum of eighteen pounds: And the said defendant further says, that he

PLEA IN DISCHARGE BY ASSIGNEE.

he hath from that time hitherto always been and still is ready to pay to the said plaintiff eighteen pounds, and brings the same here into court ready to be paid to the said plaintiff if he will receive the same; and this he the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his said action to recover any more damages in that behalf than the said sum of eighteen pounds.

J. BOOTH.

This plea may be pleaded either in its present form of bar of damages, or in bar of the action.

BOOTH.

When common persons appoint no place for payment of rent, the law appoints it on the land, but in case of the king it must be at the exchequer, or to his receiver in the country. 4. C. 72.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c.; and as to so much of the said breach of covenant as is above assigned in non-payment of fifty-six pounds, parcel of the said ninety-one pounds in the said declaration mentioned, for the rent aforesaid, for two whole years, ended on the feast day of the Nativity of Our Lord, that was in the year of Our Lord 1738, the said defendant says nothing in bar or preclusion of the said action of the said plaintiff in that respect, whereby the said plaintiff remains against the said defendant thereof undefended, wherefore the said plaintiff ought to recover against the said defendant his damages by reason of so much of the said breach of covenant in that behalf; and as to so much of the said breach of covenant as is above assigned in the non-payment of the thirty-five pounds, residue of the said ninety-one pounds of the rent aforesaid in the said declaration above mentioned, and supposed to be due, for one year and one quarter of a year, ended at the said feast-day, &c. and now last past, the said defendant saith, that the said plaintiff *ad id non*; because he saith, that after the said demised premises came to him by assignment as above-mentioned, and before the said thirty-five pounds, residue of the said ninety-one pounds of the rent aforesaid, or any part thereof, that became due and in arrear, to wit, on, &c. at, &c. he the said defendant did assign to one A. and his assigns, the said demised premises, with the appurtenances, in the said declaration mentioned, and all the estate, interest, and term of years which the said defendant then and there had to come of and in the same, by virtue of which said assignment the said A. afterwards, and before any part of the said thirty-five pounds, residue of the rent aforesaid, became due, to wit, on the same day and year last aforesaid, entered into the same premises, with the appurtenances, demised as aforesaid, and was possessed thereof for the residue of the said term of years in the said declaration mentioned; and this, &c.; wherefore, &c. if, &c.

Plea to breach of covenant, for non-payment of rent, as to part of the rent, *ad id non*; as a rent due, that defendant (who was assigned the lease) before it became due, was assigned to a third person.

Replication,
that defendant
did not assign,
&c.

And the said plaintiff saith, that he, by any thing by the said defendant in his said plea above alledged as to so much of the said breach of covenant above assigned in non-payment of the said thirty-five pounds, residue of the said ninety-one pounds of the rent aforesaid in the said declaration mentioned to be due for one whole year and one quarter of a year, ended at, &c. now last past, *precludi non*; because he says that the said defendant did not assign to the said A. the said demised premises, with the appurtenances, and all the estate, interest, and term of years which the said defendant had to come of and in the same, in manner and form as by his said plea he hath above alledged; and this he the said plaintiff prays may be enquired of by the country; and the said defendant doth so likewise; therefore, &c.

Plea of non-
damificatus to
breach of co-
venant to save
harmless.

ACTIO NON; because he saith, that the said plaintiff hath not been dammified for or by reason of any costs, damages, or expences that had been at the time of the making of the said deed brought here into court, or that since having in any way arisen or accrued against the said defendant, or against his goods or chattels, by reason of the said debt or penalty in the prosecution of the said bond, or the charges and expences relating to the said defendant in the assignment and recognizance thereof; and of this he puts himself upon the country, &c.

Plea to breach
of covenant for
non-payment of
rent; 1st, that
before any rent
became due, one
J. M. entered
upon the pre-
mises, and ex-
pelled defend-
ant; 2d, that
plaintiff enter-
ed upon the
premises and
expelled defend-
ant before resi-
due of rent be-
came due.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the breach of covenant first above assigned says, that the said plaintiff *actio non*; because he says, that after the making of the said demise, and before the said rent of twenty-two pounds, parcel of the said thirty-three pounds of the rent aforesaid, for the first year of the said term, or any part thereof became due and in arrear to the said plaintiff, to wit, on, &c. J. M. esquire, then having a right of entry unto the said several parcels of land, called L. in the said indenture mentioned, and to the said defendant in form aforesaid demised by title which accrued to J. M. before the aforesaid damage made to the said defendant as aforesaid, upon the possession of the said defendant thereof did enter, and him the said defendant from the possession thereof did expel and amove, and him the said defendant so expelled and amoved from his possession thereof by virtue of his title aforesaid, held out and yet holds out; and this he is ready to verify; wherefore, &c. if, &c.: And as to the said breach of covenant secondly above assigned, the said defendant says that the said plaintiff *actio non*; because he says, that after the commencement of the said demise as to the said messuage and tenement, with the appurtenances, and before the said eleven pounds, residue of the said thirty-three pounds of the rent aforesaid, or any part thereof became due and in arrear, to wit, on, &c. the said plaintiff did enter into the said messuage, parcel of the said demised premises,

REPLICATION.—TO PLEA OF EXPULSION.

premises, with the appurtenances, so as aforesaid demised to him the said defendant, and him the said defendant from the said messuage, and from his said occupation and possession thereof did expel and amove, and the said defendant so expelled and amoved from the said messuage, and from the use, occupation, and possession thereof hath from thence hitherto held out, against the form and effect of the said indenture; and this he the said defendant is ready to verify; wherefore, &c. if, &c.

D. POOLE.

And the said plaintiff, as to the said plea of the said defendant above pleaded in bar, as to the said breach of covenant first above assigned, says, that he by any thing above by the said defendant in that plea alledged *precludi non*; because protesting that the said J. M. had not right of entry in the said several parcels of land, called, &c. in the said indenture mentioned, and to the said defendant in form aforesaid demised by title which accrued to the said J. M. before the aforesaid demise made to the said defendant as aforesaid, as the said defendant hath above in pleading alledged, protesting also that the said J. M. did not upon the possession of the said defendant thereof enter into the said several parcels of land, or any part thereof, as the said defendant hath above in pleading alledged, for replication in this behalf the said plaintiff says, that the said J. M. did not expel or amove the said defendant from his possession of the said several parcels of land, or any part thereof, in manner and form as the said defendant hath above in pleading alledged; and this he prays may be enquired of by the country, &c.: And as to the said plea of the said defendant secondly above pleaded in bar as to the said breach of covenant secondly above assigned, the said plaintiff says, that he, &c. [as before] *precludi non*, because protesting that he the said plaintiff did not enter into the said messuage, parcel of the said demised premises, with the appurtenances, so as aforesaid demised to the said defendant, as the said defendant hath above in pleading alledged; for replication in this behalf the said plaintiff says, that he the said plaintiff did not expel or amove the said defendant from the said messuages, or from the use, occupation, and possession thereof, in manner and form as the said defendant hath above in pleading alledged; and this he prays may be enquired of by the country, &c.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith that he has not broken the said covenant in the said declaration mentioned, or any or either of them in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.

CARTER } AND the said Thomas, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said Stephen, assignee as aforesaid, ought not to have or maintain his aforesaid

Replication to the 1st plea, protesting that J. M. had no right of entry, and that he did not enter, the replication, that J. M. did not expel defendant; to the 2d, protesting that plaintiff did not enter, for replication, that he did not expel defendant.

Non Infringit pleaded in covenant.

Plea to a declaration for breach of covenant as the fault of an assignee.

said action thereof against him the said Thomas; because he says, that after the making of the said articles of agreement, in the said declaration mentioned, and after the said breach of covenant therein complained of, and in the lifetime of the said J. G. in the said agreement and declaration mentioned, and before the exhibiting the bill of the said Stephen, as assignee as aforesaid, that is to say, in Michaelmas Term, in the twenty-eighth year of, &c. in the court of our said lord the king of the exchequer, at W. in the county of Middlesex, he the said J. G. impleaded the said Thomas of and for the same identical breach of covenant, in the said declaration above mentioned, and then complained of, and such proceedings were thereupon had in the same court, before the same barons, that afterwards, in the lifetime of the said J. G. to wit, in that same term, he the said J. G. by the consideration and judgment of the same court, recovered against the said Thomas one thousand pounds, which he had sustained as well by reason of the very same identical breach of covenant in the said declaration mentioned, and therein complained of as for his costs and charges by him in his suit in that behalf expended, whereof the said Thomas is convicted, as by the said record and proceedings thereof which our said lord the king did cause to come into his council chamber, near his said exchequer, at W. aforesaid, for cause of error in the same to be convicted, and which remain there in full force and effect may fully appear; and this, &c.; wherefore, &c.; if, &c.

T. BARROW.

Plea to declaration on policy of assurance against fire, *mon infregit conventionem.*

AND the said London Assurance, by A. B. their attorney, come and defend the wrong and injury, when, &c. and say that they have not broke their covenant with the said F. M. and R. E. F. by name of, &c. for and on account of the said George, hath above thereof complained against them; and of this the said London Assurance puts themselves upon the country, &c. and the said George doth the like, &c.

Non infregit in covenant.

AND said defendant by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith that he hath not broke said covenant in said declaration mentioned, or any or either of them, in manner and form as said plaintiff hath above thereof complained against him, and of this he said defendant puts himself upon the country, &c.

Plea to an action of covenant for not repairing, viz. that he did repair.

AND the said D. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, *actio non*; because he said that the said D. from the time of the said death of the said T. R. the testator in the said declaration mentioned, and during the continuance of the said term in the said declaration mentioned, did well and sufficiently repair, maintain, and keep the said messuage

suage or tenement, hedges, ditches, and all and singular the premises in the said declaration mentioned, in good and sufficient repair, and at the determination of the said term, did quietly and peaceably leave and yield up the same well and sufficiently repaired, in all things tenantable, according to the form and effect of the said indenture, that is to say, at Oakham aforesaid, and of this, &c.

DUDFIELD } AND the said Ann, by John Alexander, her
at suit of } attorney, comes and defends the wrong and in-
BACHELOR. } jury, when, &c. and says that the said John
Bachelor ought not to have or maintain his aforesaid action thereof
against her, because she says, that the said messuage or tenement,
farm house, and outhouses thereto belonging, or any or either of
them were not ruinous, prostrate, fallen down, or out of repair,
as the said John hath above thereof complained against her, &c.
and of this she puts herself upon the country, &c.

Plea of per-
formance to an
action of cove-
nant.

W. H. ASHURST.

HARRIS } AND the said Henry, by Philip Webber, his
at suit of } attorney, comes and defends the wrong and injury,
MITCHELL. } when, &c. and saith that the said Thomas ought
not to have or maintain his aforesaid action thereof against him,
because he saith, that he the said Henry hath paid the said sum of
twenty one pounds nineteen shillings in the said indenture con-
tained, with all the interest due for the same to the said Thomas,
to wit, at Bodmin aforesaid; and of this he puts himself upon the
country, &c.

Plea of payment
to an action of
covenant.

HOLLOWAY } AND the said Posthuma, by R. Webber, her
at suit of } attorney, comes and defends the wrong and injury,
COLLIER. } when, &c. and says that the said William ought
not to have his said action against her, because as to the breach of
covenant aforesaid, above supposed to be made in this, that the
said P. before the said twenty-fifth day of July next, after the date
of the said articles, did not cause the said dwelling house to be
fully and effectually finished in workmanlike manner, to all in-
tents and purposes, both within doors and without, according to the
plan or form it was then in, or were first intended to be, the said
P. says, that the said P. before the said twenty-fifth day July next
after the date of the said articles, did cause the said dwelling house
to be fully and effectually finished in a workmanlike manner, to
all intents and purposes, both within doors and without, accord-
ing to the plan or form it was first intended to be in, according to
the true intent and meaning of the said covenant so made in that
respect as aforesaid, and hereupon she puts herself on the country,
and the said William does so likewise: And as to the breach of
covenant

Plea of per-
formance of co-
venant, breaches
assigned, the
defendant did
not finish the
dwelling house
in workmanlike
manner, and did
not build the
same, &c. &c.

PLEA.—INSOLVENT DEBTORS' ACT.

covenant aforesaid supposed to be made in this, that the said P. hath not built a convenient stable, or a shelf house for brewing, with a pump therein, the said P. says, that she the said P. hath built a convenient stable, and a shelf house for brewing, and hath set up a pump therein, according to the form and effect of her said covenant so made in that respect as aforesaid; and hereupon the also puts herself upon the country, &c.

Plea of insolvent
debtor's act to
action of cove-
nant.

DIEDIN

at suit of

EMBL.

AND the said Charles Dibdin, by Edward, his attorney, comes and defends the wrong and injury, when, &c.; and as to the said breach of covenant above assigned, as to ninety-four pounds five shillings of the said yearly sum of thirty-nine pounds, parcel of the said one hundred and thirty-five pounds five shillings in the said declaration mentioned, for two years and five months of another year, ended at and upon the fourteenth day of January, A. D. 1778, saith that the said W. E. ought not to have execution against the person of him the said C. D. for the damages to be recovered in this action, as to the said C. D. was actually a prisoner in the prison of , at the suit of A. B. on the twenty-eighth day of January, A. D. 1778, mentioned in a certain act of parliament made at the parliament of Great Britain, holden at Westminster, in the county of Middlesex aforesaid, on the twentieth day of November, A. D. 1777, entitled an act for the relief of insolvents, and for the relief of bankrupts in certain cases; that he the said C. D. was duly discharged according to the said act at the sessions; and the said C. D. further saith, that the said ninety-four pounds five shillings, parcel, &c. was due and in arrear from him the said C. D. to the said W. E. before the said twenty-eighth day of January, in the year of Our Lord 1778, in the said act mentioned, that is to say, on the said fourteenth day of January, A. D. 1778 aforesaid, to wit, at Westminster aforesaid; and this he the said C. D. is ready to verify; wherefore he prays judgment if the said W. E. ought to have execution against the person of him the said C. D. for the damages to be recovered in this action as to the said ninety-one pounds, parcel, &c. and as to the said breach of covenant above assigned, as to thirty-nine pounds of the said yearly sum of thirty-nine pounds, residue of the said one hundred and thirty-three pounds five shillings in the said declaration mentioned, the said C. D. saith that he doth not owe to the said W. E. the said thirty-nine pounds, the residue, &c. or any part thereof, made, &c. and of this he the said C. D. puts himself upon the country, &c.

AND the said R. B. and J. B. by A. B. their attorney, come and defend the wrong and injury, when, &c. and say that the said B. ought not to have or maintain his said action thereof against them, because they say, that the right, title, interest, term of years then to come and unexpired, property, claim, and demand of the said J. A. of in and to the said messuage, house, or tenement

ment commonly called the parsonage house, together with the barn, stable, and yard thereunto belonging, situate, standing, and being in S. aforesaid, in the county aforesaid; also all those the said two parts in three, and all and singular the great and small tythes arising, coming, growing, renewing with, and belonging to the townships of S. and N. within the parish or lordship of S. aforesaid, and also all and singular the said two parts in three of the mortmains in the chancel of the parish of S. aforesaid; and also all and singular the said tythes coming, growing, and renewing of and from the said closes called Reading closes, in the parish of S. aforesaid, together with the appurtenances thereunto belonging, or of or unto any part thereof, by assignment thereof duly made, did not come to and vest in the said R. B. and J. B. in manner and form as the said Benjamin hath in his said declaration alledged; and of this they the said R. B. put themselves upon the country, and the said B. doth the like, &c. therefore, &c.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and as to the said breach of covenant by the said Joseph, in the first Count above assigned, he the said J. C. C. says, *actio non*; because he says, that he the said J. C. C. did not find unto him the said Joseph, meat, drink, lodging, and all other necessities, according to the custom of the city of London, during the said term in the said indenture mentioned, according to the tenor and effect of the said covenant, and of the covenant of the said J. C. in that behalf made as aforesaid, and of this he puts himself upon the country, &c.: And for further plea in this behalf, as to the said breach of covenant by the said Joseph, in the said first Count of the said declaration above assigned, the said J. C. C. by leave of, &c. says, *actio non*; because he lays, protesting that he the said J. C. ought not according to the custom of the city of London, to have found unto the said Joseph for and during sickness and indisposition, necessary medicines, and medical assistance, for plea in this behalf, he the said J. C. says that he was always ready and willing, and offered to find unto him the said Joseph, necessary medicines and medical assistance for and during his said sickness and indisposition in the said first Count of the said declaration mentioned, but the said Joseph then and there wholly refused to accept the same; and this, &c. wherefore, &c. if, &c. (add two more pleas similar to the last, only omitting what is in Italics, and saying "second Count," instead of the "first.")

Plea to declaration on indenture of apprenticeship.

W. BALDWIN.

AND the said Henry, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says that the said charter-party of affreightment, in the said declaration mentioned, is not the deed of him said defendant, and of this he puts himself upon the country, &c.: And for further plea in this behalf, as to said breach of covenant in the said declaration firstly above assigned, the said defendant by leave, &c. according to the form of, &c. the said defendant says, *actio non*; because he says, that the said defendant hath not paid to the said plaintiff all such monies, &c.

Plea to the last declaration, *actio non est factum*, &c. that defendant hath paid the freight, &c. 2d. that defendant did not keep the ship for use of the said plaintiff.

PLEA.—IN EXCUSE OF PERFORMANCE.

as were become due and payable from the said defendant to the said plaintiff for freight, and for two third parts of port charges and pilotage that arose on the said ship at and from London to the time of her being unloaden according to the form and effect of the said charter-party of affreightment, to wit, at, &c. and of this he puts himself upon the country, &c. : And for further plea in this behalf, as to the said breach of covenant in the said declaration lastly above assigned, the said defendant, by leave of, &c. as to so much thereof as relates to the keeping of the said ship, in the said declaration mentioned, on demorage, at St. Mary's aforesaid, for eighteen days, parcel of the said thirty days in the said declaration mentioned, that the said plaintiff ought, &c. *adlio non*; because he says, that he the said defendant did not keep the said ship on demorage at St. Mary's aforesaid for the said eighteen days, parcel as aforesaid, or of any of them, or any part thereof in manner and form as the said plaintiff hath above in his said declaration alledged; and of this the said defendant puts himself upon the country, &c. and as to the keeping of the said ship in the said declaration mentioned on demorage at St. Mary's aforesaid, for twelve days, residue of the said thirty days, in the said declaration mentioned, the said defendant says, &c. *adlio non*; because he says, that he the said defendant hath paid to the said plaintiff the sum of thirty-six pounds, being so much money as became due and payable to the said plaintiff for and on account of the keeping of the said ship on demorage, at St. Mary's, in the said declaration mentioned, for those twelve days, according to the form and effect of the said charter-party of affreightment, to wit, at, &c.; and of this the said defendant puts himself upon the county, &c.

Plea (to a declaration for seducing and harbouring the plaintiff's apprentice), that the plaintiff broke his covenants with the apprentice, the defendant's son, and used him so cruelly, that he ran away to and took refuge in the defendant's house, and that they went together and made their complaint before a magistrate, who summoned the parties and ordered a compromise, which took place according to the form of the Statute 3. Eliz. c. 4.

FIRST, General issue "not guilty." And for further plea in this behalf the said defendant, by leave of, &c. says, *adlio non*; because he says, that the said T. G. in the said declaration mentioned is the son of him the said defendant, and that on, &c. in the said declaration mentioned, to wit, at, &c. the said T. G. the son of the said defendant, by the said indenture of apprenticeship made in the said second Count mentioned (a counterpart of which said indenture, sealed with the seal of the said plaintiff, the said defendant brings into court here, the date whereof is the day and year aforesaid), did bind himself to, and became the apprentice of the said plaintiff, to learn his art, and with him after the manner of an apprentice to serve from the day of the date thereof unto the full end and term of seven years from thence next ensuing, and fully to be complete and ended; and the said plaintiff, in consideration of the sum of twenty pounds, which by the said indenture he acknowledged to have received on the day of the date thereof with the said apprentice, did by the said indenture covenant that the said apprentice in the art of a jeweller, which he

then

PLEA IN EXCUSE OF PERFORMANCE.

then used, to teach and instruct, or cause to be taught and instructed by the best way and manner that he could, finding and allowing to his said apprentice sufficient meat, drink, washing, lodging, and all other necessities during the said term, except apparel, as in the said indenture is mentioned (reference being thereunto had) may more fully and at large appear; by virtue of which said indenture he the said T. G. entered and was received into the service of the said plaintiff, and there staid and continued under the said indenture until the time of quitting the same, as is hereafter mentioned: And the said defendant in fact says, that the said T. G. being such apprentice to the said plaintiff as aforesaid, he the said plaintiff did not, from the making of the said indenture till the time of the said T. G.'s quitting the service of the said plaintiff as hereafter mentioned, teach and instruct, or cause to be taught and instructed the said apprentice in the said art of a jeweller, but then and there refused, and wholly refused and neglected so to do, to wit, at, &c.; and the said plaintiff did not, during the time aforesaid, find and provide for the said apprentice sufficient meat, drink, washing, lodging, and other necessities, except apparel, but then and there refused, omitted, and neglected so to do, to wit, at, &c. contrary to the covenant of the said plaintiff in that behalf made as aforesaid: And the said defendant further says, that after the said T. G. became such apprentice as aforesaid, to wit, on, &c. and on divers other days and times between that day and the said time when, &c. in the said declaration mentioned, to wit, at, &c. he the said plaintiff, without any reasonable or justifiable cause, immediately chastised, beat, corrected, bruised, terrified, wounded, and ill-treated the said apprentice, and then and there used him with such inhumanity and cruelty, that he the said apprentice, from great fear and dread of his life and bodily harm at the same time when, &c. in the said declaration mentioned, left and quitted the service of the said plaintiff, and fled to and took refuge in the house of the said defendant, in order as well to avoid the said oppressive and cruel behaviour of the said plaintiff, as also to inform the said defendant his father of the premises, and solicit to attend and accompany his said son before some one of his majesty's justices, in order to procure his discharge from the apprenticeship, and to obtain a return of part of the said premium in the said indenture mentioned, in proportion to the residue of the said term yet to come and unexpired therein for the cause aforesaid: And the said defendant in fact further says, that he did thereupon, at the said time when, &c. in the said second Count mentioned, advise the said T. G. his son to quit and leave the service of the said plaintiff, and to return home to him the said defendant in order that they might go before some justice assigned to keep the peace of our lord the king in and for the city of London, where the said plaintiff then dwelt, for the purpose aforesaid, and make complaint before such justice against the said plaintiff of and upon the premises aforesaid; and thereupon the said T. G. at the said time when, &c. in the said

second Count mentioned, and pursuant to such advice as aforesaid, left and quitted the service of the said plaintiff for the purpose aforesaid, and came home to and at the said time when, &c. in the said first Count mentioned, was received and harboured by the said defendant until they could go before the said justice as aforesaid; and that they did afterwards, to wit, on, &c. in the said declaration mentioned, go together before one A. B. esquire, then and there being one of his majesty's justices of the peace in and for the city of London, where the said plaintiff the master then and there dwelt, to make, and then and there made their complaint to the said justice of and upon the premises, and prayed such order and direction of the said justice between the said master and his said apprentice, as to him the said justice in his wisdom and discretion should appear to be required by the equity of the said cause, according to the form of the statute in such case made and provided: And the said defendant in fact further says, that the said justice then and there received the said complaint, and having then and there caused the said plaintiff and the said defendant and T. G. his son to appear before him the said justice touching the same, and the said matter having been duly heard before the said justice, he the said justice did then and there take order between the said parties upon the premises aforesaid, and did thereupon then and there order and direct that the said parties should compound and agree all and singular the said matters in difference between them in manner following, that is to say, that the said defendant, for and on behalf of himself and the said T. G. his son, on their part should no further prosecute the said complaint against the said plaintiff for the cause aforesaid, but to acquit and discharge him of and from all damages, costs, and charges of and concerning the same, and the said application, and in consideration thereof the said plaintiff should on his part release, acquit, and discharge the said T. G. the apprentice, and the defendant the father, of and from all the said supposed causes of action in the said declaration mentioned, as also all other action and actions, cause and causes of actions, suits and demands whatsoever of and concerning the premises aforesaid, and to take back and continue the said T. G. as his apprentice under the said indenture, as if no such dispute, departure, or difference had happened: And the said defendant in fact further says, that in pursuance of the said order, the said plaintiff did then and there compound and agree to the premises, upon and according to the terms of the said order, and in pursuance of such order the said defendant did then and there acquit and discharge the said plaintiff of and from all damages, &c. and did also then and there pay the costs of the said complaint and proceedings before the said justice, amounting to a large sum of money, to wit, the sum of two pounds of lawful money of Great Britain, and hath not further prosecuted the said complaint, but the same is wholly ended and determined, and the said T. G. the apprentice thereupon then and there returned to, and was accepted and received into

the service of the said plaintiff on the terms aforesaid, to wit, at, &c. according to the form of the statute in such case made and provided, which said persuation, reception, and detention of the said son of the said defendant by him the said defendant, as hereinbefore is mentioned, is the same entertaining, harbouring, and detaining of the said son in the said declaration mentioned, and whereof the said plaintiff hath above thereof complained against him the said defendant; and this, &c. wherefore, &c.

T. BARROW.

PLANT } AND the said William, by A. B. his at-
at suit of } torney, comes and defends the wrong and
LEGH, ESQUIRE. } jury, when, &c. and craves oyer of the said
supposed covenant in the said supposed indenture contained, to be
at the expence of the ditching to be done on the said demised pre-
mises, and to keep the hedges and fences in repair, and upon
which said covenant the said Peter hath assigned the said supposed
breach in the said declaration mentioned, and it is read to him in
these words, that is to say; and the said William, for himself, his
heirs, executors, administrators, and assigns, doth covenant, pro-
mise, and grant to and with the said Peter, his heirs, and assigns,
by these presents, in manner and form following, that is to say,
that he the said William, his executors, administrators, or assigns,
or some of them, shall and will be at the expence of all such
ditching as shall be necessary to be done on the said demised
premises during the said term, and to keep the hedges and fences
in good repair, and plashed in such manner as he the said Peter,
his heirs, or assigns, shall direct or order, which being read and
heard, the said William says, that the said indenture in the said
declaration mentioned is not his deed in manner and form as the
said Peter hath above thereof complained against him; and of this
he puts himself upon the country, &c.: And for further plea in
this behalf, he the said William, by leave of the court here for
this purpose first had and obtained, according to the form of the
statute in such case made and provided, says, that the said Peter
ought not to have or maintain his aforesaid action thereof against
him; because he says, that he the said William was at the ex-
pence of all such ditching as was necessary during the said term
to be done on the said demised premises, and before the surrender
aforesaid, and that he kept the hedges and fences in good repair,
and according to the form and effect of the said indenture, and
of the covenant of him the said William in that behalf made as
aforesaid, and did not permit or suffer the ditches, hedges, and
fences of the said demised premises, or any part thereof, to be
or remain choaked up, filled up, ruinous, in decay, or out of
repair, in manner and form as the said Peter hath above in his
said declaration alledged; and of this he the said William puts
himself upon the country, &c.: And for further plea as to so
much of the said supposed breach of covenant in the said declara-

Plea, *Nemo est*
tum; ad, that
defendant was
at all the ex-
pence of ditch-
ing according to
covenant.

tion mentioned, as relates to the not keeping the hedges and fences in good repair, he the said William, by like leave of, &c. according to the form of, &c. says, that the said Peter ought not to have or maintain his aforesaid action thereof against him; because he says, that he the said William, at all times during the said demise term, and before the aforesaid surrender, was ready and willing to repair and keep in repair the said ditches, hedges, and fences, by the said declaration supposed to be ruinous and out of repair, in such manner as the said Peter should direct or order, or would have accordingly repaired the same had any such directions or orders been given; yet he the said William in fact further saith, that the said Peter did not, at any time during the said demise term, and before the surrender as aforesaid, direct or order in what manner, or that he the said William should in any manner whatsoever repair or keep in repair the said ditches, hedges, and fences, by the said declaration supposed to be ruinous and out of repair, or any or either of them, or any part thereof; and this, &c.; wherefore, &c. if, &c.

V. LAWES.

I do not recollect any instance of a partial *oyer*, or *oyer* of only a part of the deed as here pleaded, but I see no objection to it, and I think that the court will not only countenance it, but would justly animadvert on setting out the whole of a deed so long as that in question, when only so small a part of it applies to the case declared on; demanding of *oyer*, &c. might be confined to those parts of the deed which are wanted, and by that means save expence; but as the practice will be new, and is therefore not unlikely to be resisted by the plain-

tiff, and as defendant is not now in strictness entitled to *oyer* (the rule to plead being out), so it will not perhaps be worth while to insist very strenuously on a partial *oyer*, although it may be under a demand of *oyer* of the indenture mentioned in the plaintiff's declaration, and the copy of the covenant declared on, or the covenant to pay for the ditching, and to keep the fences in repair, under which demand you will be entitled to have the whole deed read, and the necessary covenant copied, on paying only for such copy.

V. LAWES.

Easter Term, 33. Geo. III.

DICKSON
against

MIDDLESEX, to wit. Charles

a Declaration
in covenant,
mortgagee against two of the
mortgagors, for
non-payment of
mortgage money.

BROWN AND ANOTHER.

Brown, late of Garston, in the parish of Bletchingley, in the county of Surry, esquire, and William Bryant the younger, late of Reigate, in the county of Surry, gent. were summoned to answer unto Thomas Dickson of a plea that they keep with him the covenant made between them the said Charles and William and the said Thomas, according to the force, form, and effect of a certain indenture made between one Harry Peyton, the said Charles and William, and the said Thomas, and thereupon the said Thomas, by William Chippendale his attorney, complains; for that whereas by a certain indenture made on the fourteenth day of December, in the year of Our Lord 1787, at Westminster, in the county of Middlesex, between one Henry Peyton, by his description therein mentioned of the first part, the said C. B. and W. B. the younger, by their several descriptions therein mentioned of

(a) See ante 65 and Index.

the

AGAINST (TWO OF THREE) MORTGAGORS.

the second part, and the said T. D. of the third part (one part of which said indenture, sealed with the seal of the said Charles and William, the said Thomas now brings into court here, the date whereof is the day and year aforesaid), the said Charles and William, for and in consideration of the sum of two thousand pounds of lawful money of Great Britain, well and truly paid by the said T. D. bargained, sold, demised, leased, and to farm let unto the said Thomas, his executors, administrators, and assigns, certain messuages, tenements, and premises, with the appurtenances, in the said indenture particularly mentioned and described, to hold the said premises, with the appurtenances, to the said Thomas, his executors, administrators, and assigns, the day next before the day of the date of the same indenture, for and during, and until the full end and term of one thousand years, without impeachment of waste ; subject, nevertheless, to a *proviso* or condition of redemption for making void the same indenture, and the grant and demise thereby made on the payment unto the said Thomas, his executors, administrators, and assigns, of the full sum of two thousand pounds of lawful money of Great Britain, on the fourteenth day of December, which would be in the year of Our Lord 1792, with interest for the same in the mean time, after the rate of five pounds for every one hundred pounds, for a year, payable half yearly, the first payment thereof to begin and be made on the fourteenth day of June then next ensuing the date thereof, without fraud or further delay, without any deduction or abatement to be made or taken out of the same, for or in respect of parliamentary or other taxes, imposed, or thereafter to be imposed, for or in respect thereof, or of any other matter, cause, or thing whatsoever ; and the said Charles and William, for themselves, their heirs, executors, and administrators, did by the said indenture covenant, promise, and agree to and with the said Thomas, his executors, administrators, or assigns, in manner and form following, that is to say, that they the said Charles and William, and the said H. P. or one of them, their, or one of their heirs, executors, administrators, and assigns, should and would well and truly pay, or cause to be paid unto the said Thomas, his executors, administrators, or assigns, the said sum of two thousand pounds, with interest for the same as aforesaid, at the day and time, and in such manner and form as in the said indenture (reference being thereunto had) will more fully and at large appear : And the said Thomas further says, that the said C. and W. did not, nor did the said H. P. in the said indenture mentioned, on the said fourteenth day of December, in the year of Our Lord 1792, in the said indenture for that purpose mentioned, pay or cause to be paid to the said Thomas, his executors, administrators, or assigns, the said sum of two thousand pounds so advanced and lent as aforesaid, with interest for the same, according to the covenant for payment thereof as aforesaid, but therein wholly failed and made default ; and the said principal sum of two thousand pounds, and all the interest for the same from the time of making the said indenture hitherto still remain wholly

COVENANT.

unpaid to the said Thomas, contrary to the form and effect of the said indenture, and of the said covenant of the said C. and W. in that behalf made as aforesaid; and so the said Thomas saith, that the said C. and W. although often requested, have not, nor hath either of them kept their said covenant so by them made with the said Thomas in this behalf, but have broken the same, and to keep the same with the said Thomas have, and each of them hath wholly refused, and still refuse so to do, to the damage of the said Thomas of three thousand pounds; therefore he brings his suit, &c.

T. BARROW.

I N D E X.

GENERAL DIVISIONS OR HEADS, AND LEADING TITLES IN THE CIVIL DIVISION,

From Vol. II. p. 258, and Index, Vol. III. p. xxxiii.

ASSUMPSIT, Judgments in. *See* Judgments.

AUDITA QUERELA. *See* Practical Forms.

ATTORNEYS.

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Proceedings by and against in various actions. (*See* Index to Subdivisions of General Heads in each Action.)

BARON and FEME.

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CASES and OPINIONS

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CLERGYMEN.

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Proceedings by and against, in various actions. (*See* Index to Subdivisions, &c. in the Civil Division, *Manumissus* and *Quo Warranto*.)

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2. On Goods. } (3)
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IV. On INDENTURES.

1. Of Apprenticeship. (5) (By and against Apprentices.) *See* Articles of Agreement. (1)

2. LEASE.

1. By Lessor, and Assignees of; Assignees under an Act of Parliament; Assignees by Purchase; Assignees of Bankrupt; Copvholders; Devises; Executors and Administrators; Reversioners. (6)

1. For not repairing.

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V. PLEAS, follow the division of their respective Declarations, as to Declarations.

On ARTICLES of AGREEMENT. (10)

CHARTERPARTIES of AFFREIGHTMENT. (11)

POLICIES of ASSURANCE.

{ On Ships. } (12)
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INDENTURES.

1. Of APPRENTICESHIP. (14)

2. LEASE.

{ 1. By Lessee, &c. (15)
 { 2. By Lessor, &c. (16)

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VI. REPLICATIONS, &c. follow their respective Pleas.

VII. JUDGMENTS in COVENANT. *See* Judgments.

I. COVENANT on ARTICLES of AGREEMENT. (1) (*See* COVENANT on INDENTURES of Apprenticeship, *post*. cxii. and on LEASES, *post*.)

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302. Declaration by *master* against his *apprentice*, on a covenant *not to exercise his trade* within ten miles of the master's residence. Breach, that he did.

303. Declaration in the Exchequer of Pleas, *foreman* to a tobaccoist against his *masters*, for dismissing him their service before the end of his term, and for not paying him his *wages*.

309. Declaration in B. R. against two *house-carpenters*, for not finishing plaintiff's house within a stipulated time, whereby he was obliged to hire another house for the accommodation of his family; and opinion, whether the action ought to be debt, for the penalty contained in the articles, or on the covenant. (*See Assumpsit, vol. 2. p. 386. 388.*)

312. Declaration in C. B. against the *master of a ship*, by sea-

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- men for their wages, on articles entered into between the master and other officers and seamen. Breach, non-payment. (See Assumpsit, vol. 2. p. 345. 347. 348)*
315. Plea thereto, 1st, *non est factum*; 2d, set off; 3d, that it was agreed by the said articles, in case any person should mutiny he should forfeit his wages; 4th, that plaintiff was discharged and dismissed to put an end to the mutiny.
316. Declaration on articles of agreement, to accept a lease of the plaintiff of premises when prepared, the lease was prepared and tendered for execution, but defendant refused to accept the lease.
328. Declaration in the exchequer of pleas by *baron and feme*, to become a copartner in trade with a *feme sole trader*, according to the custom of the city of London, carrying on the trade of a painter, carver, and gilder. PLEA, that no articles of copartnership, with necessary additional covenants have been legally made, according to the effect of the indenture for the performance thereof.
330. DEMURRER thereto, and joinder.
331. Bill against an attorney of C. B. in covenant on articles of separation between defendant and plaintiff's wife, defendant was to allow plaintiff an annuity. Breach for non-payment. Plea. Reprehension. Rejoinder.
332. On articles of agreement for non-payment of rent.
333. Declaration on articles of agreement by copartners in the trade of a pawnbroker, for the better regulation of their trade.

Non infregit conventionem,

1. R. Pr. B. R. 179, & 182.

Declaration at the suit of an attorney of the common pleas, on a clerk's articles for not obeying lawful commands, absenting from service, and refusing to account for money purloined,

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Declaration in covenant, supervisors of defendant's coppermines for his salary, and five shillings a ton for raising the copper, and for maintenance during the service, and expences back to England after the expiration thereof, according to covenant in articles of agreement; breach, 1st, did not pay thirty-six pounds wages; 2d, did not find meat, drink, washing, and lodging; 3d, did not pay for thirteen tons of copper raised; 4th, did not at defendant's charge find for plaintiff a passage to the mines; 5th, dismissed plaintiff their service, but did not pay his expences to England. Plea in bar as to 1st, taking issue thereon; as to 2d, same; 3d, same; 4th, same; 5th, same.

2. R. P. C. P. 181

Declaration in covenant on marriage articles against the executrix of the husband, for not conveying certain estates on consideration of the wife's portion,

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Declaration in covenant on indenture against the termor of the covenantor for non-payment of thirty-nine pounds, and interest,

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- Declaration in covenant by the survivor of two joint purchasers of an estate against the executrix of the executor of the vendor, upon articles of agreement, to indemnify them against the claim of an annuity set up by a third person as charged upon the premises purchased; breach, that the annuitant had filed a bill in chancery, against which defendants had not indemnified, - - - Lil. Ent. 134
- Declaration, the vendee against the vendor of goods, on the clause of warranty contained in the bill of sale thereof, for that the property at the time of sale was in another. Special demurrer thereto, for not shewing a special venue in the declaration, and for not shewing in whom the property of the goods was, and for not sufficiently identifying the plaintiff in the bill of sale, and for being contradictory in first alledging that defendant sold the goods, and then saying he had no possession or property therein, and for not expressly alledging that any schedule is annexed to the deed, though a schedule is referred to joinder in demurrer, - - - *Ibid* 138
- Declaration on covenant on articles of agreement against executor of the covenantor for not receiving south sea stock, &c. - - - Lil. Ent. 139
- Declaration in covenant for breach of articles of agreement by deputies to prothonotary of palace court, respecting his office of deputy, - - - Pl. Aff. 321
- Declaration in covenant in B. R. on a covenant in articles of agreement for the purchase of Epsom salts, to be taken by plaintiff for the term of seven years, and from time to time shipped by defendant, and for breach of covenant not to sell to any other person. Plea, a sum of money paid and received in satisfaction. Replication, protesting that defendant did not pay, says that plaintiff did not receive in satisfaction and issue. - - - J. G. 330. 334, 335
- Declaration in covenant on articles of agreement for consigning merchandize, nearly similar to the last. Plea, taking issue on each breach, - - - *Ib.* 335
- Declaration in covenant on agreement for sale of timber, - - - *Ib.* 334
- Declaration in B. R. for rent, and letting premises go out of repair, and pulling down partition, - - - *Ib.* 197
- Plea, to each breach, - - - *Ib.* 203
- Rule to bring rent into court, - - - *Ib.* 204
- Covenant; breach, that the plaintiff and his servants were sued in an action of trespass in the common pleas, and damages recovered, which he was compelled to pay, 2. Ven. 60. Defendant pleaded, *non infregit*, &c.
- On a covenant to permit plaintiff to make a drain to carry off waste water; breach, that the defendant being possessed of a piece of land between the plaintiff's house and the channel, demised to one J. who would not suffer the plaintiff to make the drain; plea, that he did permit, and demurrer, 2. Ven. 274.
- Breach for rent for tythes reserved on articles, *Clif.* 210.
- For not paying rent of a brewhouse, *Ib.* 220.
- On articles to render plaintiff an account and to pay money. Breach, that defendant received eight hundred pounds, and neither rendered any account or paid, &c. 1. Saun. 44.

- On marriage articles to pay plaintiff annually one hundred pounds, till the marriage, or defendant's son should come of age, *Demurrer, W. Ent.* 158.
- On articles to pay plaintiff annually four pounds, until a greater pension should be given him by another, *Bro. R.* 165.
- To pay forty pounds annually, until a certain place in the church of considerable or greater magnitude should be given to plaintiff, and he be established in it, *Br. R.* 144.
- That defendant did not pay his part of the expence in the repairing of banks, &c. according to covenant, *Vid.* 126.
- That neither testator nor C. paid the several sums of money according to the agreement, 1. *Bro.* 128.
- Breach on a written agreement, that plaintiff should have forty pounds *per annum* paid to him out of the profits of the office of the prerogative court, till he could be established in some other clerical place there, *Br. R.* 144.
- On a covenant broken for non-payment of an annuity, *Vid.* 142.
- For not delivering barley according to the agreement, *Chf.* 204.
- For not delivering a navy note according to covenant by a writing, *Il.* 220.
- For that defendant did not keep plaintiff indemnified of the yearly rent of seven pounds, and the arrearages thereof, 2. *Infr. Cl.* 282.
- On articles of agreement for plate that belonged to the king, *Bro. Met.* 103.
- On a written agreement that defendant agreed plaintiff should receive to the use of the poor, four pounds, which defendant received. Plea, that he did not receive, 1. *Bro.* 134. 3. *Infr. Cl.* 386.
- On a written agreement, that no act should be done by defendant for the revocation of the power of attorney, or to release the writing obligatory, *Win. Ent.* 156. *Hanf.* 72.
- On articles to receive eight hundred pounds, a moiety in monies numbered, the other moiety in woollen or linen cloth, and that defendant did not deliver according to agreement, *Br. R.* 154.
- On articles; breach assigned generally in the declaration for the sale of wood, that although plaintiff performed every thing in the articles on his part, yet defendant did not keep his covenant on his part, but broke it, *Br. B.* 152.
- On a written agreement by testator to make a chattel lease, that defendant did not pay to testator in his lifetime, nor to plaintiff since his death. Plea, that testator *nil habuit in tenementis.* *Demurrer, 2. Vent.* 98.
- For not paying principal and interest on purchase money upon part of a jointure continued in the defendant's hands, *Clift.* 217. Plea, an agreement to pay and receive some money down, and a bond for the rest. Replication, protesting that no such agreement was had, nor bond given for plea that he did not pay the money down. *Demurrer thereto.*
- On articles indented, *Co. Ent.* 110. On written articles of covenant, an agreement indented, 3. *Br.* 29. On writing made between parties, *Ajst.* 154. On a bill, *Co. Ent.* 113. On written agreement concerning an adventure on a voyage with defendant, who agreed to render an account to plaintiff on the return of the ship, *Her.* 218.
- Against a prior on a covenant made between plaintiff and L. deceased, and the late prior, on an agreement concerning a demise for years, *Ra. Entr.* 135.
- On an agreement made between plaintiff and his wife and two defendants, and the wife of one of them, &c. *Her.* 281.
- On articles to pay plaintiff annually four pounds, until a better allowance is given by another, 3. *Br.* 28.
- On a written agreement by which defendant covenanted to pay money to plaintiff on request, if the other did not pay within sixteen days, *Ajst.* 154.
- On articles by which defendant covenanted plaintiff for his labour and expences, forty pounds, on the day of sealing the articles, and other money on obtaining the

the king's pardon, and action brought for forty pounds. Plea, payment, *Ash.* 155.

That defendant did not deliver to plaintiff the corn before the feast-day, having a month's notice, *Ra. Ent.* 134.

Declaration in covenant for not saving the plaintiff harmless, and for non-performance, *2. Mod. Ent.* 6.

Declaration in covenant for not saving plaintiff harmless from payment of money if a suit should be commenced against plaintiff before a certain time, Michaelmas Term then next following, *2. Mod. Ent.* 9 to 12.

Plea in bar, with a protestation that the plaintiff was not damnified before the end of Michaelmas Term, traversing the time of suing out the writ. Replication, setting forth the date of the *scire facias*, that it was sued out before the end of Michaelmas Term.

Declaration in C. B. by an attorney, upon articles of agreement to permit the defendant to receive tythes, for which defendant covenanted to pay one hundred and fifty pounds in lieu thereof. Plea, that one J. P. died at S. by his death his title to the tythes were at an end, *2. Mod. Ent.* 13.

Declaration in covenant on articles of agreement, for non-payment of rent, that in consideration plaintiff would permit S. P. to enjoy a farm, defendant would pay a sum of money, due from S. P. to plaintiff, and the rent of said farm. Plea in bar, concord in satisfaction, covenants before any breach, *2. Mod. Ent.* 24.

Declaration in covenant upon an indenture of bargain and sale. Breach, that he did not devise a note of a fine to be levied. Plea in bar, that he did not request them, and issue, *2. Mod. Ent.* 31.

Declaration in covenant on an agreement for the sale of an office, and the vender to have the pension, &c. belonging to it for life. Plea, that the defendant permitted the plaintiff to receive the profits, &c. traversing the receipt of any money by the defendant. Demurrer and joinder, and judgment upon the demurrer, *2. Mod. Ent.* 36.

Declaration in covenant in B. R. on articles of agreement, against one that received the profits of a lunatic's estate, and did not account according to his covenant. Plea, that before the receipt of one thousand eight hundred pounds he laid out one thousand eight hundred pounds towards satisfaction. Demurrer and joinder, continuance. Judgment, that the plea is insufficient. Writ of enquiry awarded, *2. Mod. Ent.* 63.

Declaration in covenant on articles of agreement, copartnership, for not permitting plaintiff to carry on the trade of the house, but hindering the plaintiff therefrom, and denying the plaintiff the sole use of the cutting-room, and the defendant solicited two customers after the end of the partnership, that they made several suits of cloaths for them; that they did not do to the utmost of their power to turn over the partnership trade to one T.; that defendant drew away or prevailed upon people not to employ the plaintiff; that defendant kept partner's customers from the plaintiff. Several other breaches. Plea in bar to the several breaches aforesaid, and joinder *cur. adv. vult.* as to the demurrer *ven. fa.* awarded as well to try the issues as to assess damages, if judgment should be given on the demurrer, *Nr. Pri. postea.* 1st, Issue found for plaintiff. 2d and 3d, For defendant. 4th, For plaintiff conditional damages found on the demurrer. Judgment for plaintiff for part upon the demurrer, *2. Mod. Ent.* 70.

Declaration for breach of covenants in an indenture of charterparty, in not paying for demorage, primage, the Dover duty, and for freight. Plea as to the demorage, that they loaded when she was ready to take in her loading; but that they could not load her, for the river Elbe was frozen up; and as to the freight, primage, and Dover duty, that it was paid. Replication, that the river was thawed at the time that the defendants plead it was frozen, and might have set sail sooner had she been loaded, *2. Mod. Ent.* 1.

- Declaration in covenant on a lease, against a man and his wife, executrix, by an administrator, during the minority of an infant, for rent in arrear, *proferit* of letters of administration, imparlance. Plea, after the last continuance, that R. W. the wife, was of age, 2. *Mod. Ent.* 18.
- Declaration in covenant upon an indenture of demise, against lessee for non-payment of rent, and for not repairing. Plea in bar as to the rent, alledging by protestation that thirty-one pounds ten shillings were not in arrear; for plea says, that before suing out the original he paid the plaintiff five pounds five shillings in full satisfaction, and that from the time when the premises were out of repair, he repaired them in convenient time; traversing, that messuages were out of repair. Replication as to the rent, non-payment; and as to the repairs, issue, 2. *Mod. Ent.* 18.
- Declaration in covenant on an indenture of demise, for not repairing one of the fifteen messuages that was burnt down by fire, 2. *Mod. Ent.* 20.
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- Declaration in covenant by the dean and chapter of Trinity Church, Bristol, against an executor of an assignee of the reversion of a term, for want of repairs. Plea in bar as to the chancel, that the plaintiffs did not demise, and issue as to the barn. Demurrer. Replication as to repairing the barn, joinder in demurrer, continuance, award of *venue*, as well to try the issue as to enquire of the damages, if judgment should be given on demurrers, 2. *Mod. Ent.* 27.
- Declaration in covenant for assigning the premises without the leave of the lessor, 2. *Mod. Ent.* 32.
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- Declaration in an action of covenant in an indenture of demise, for want of repairs, brought by the plaintiff as son and heir upon a covenant to his father. Plea, that after the lease made to the said J. and before the premises fell to the ground, defendant assigned his term, and that premises were burnt down by the great fire of London; and that within a convenient time after they were repaired. Demurrer, for that plea does not set forth by whom the said messuage was rebuilt, nor within what time after it was burnt down; and because the plea is uncertain, a negative pregnant, and defective in form, 2. *Mod. Ent.* 39.
- Declaration in covenant for not paying three pounds for a herriot, brought against an executor, upon a lease made to the testator, to commence after the death of one S. C. 2. *Mod. Ent.* 43.
- Declaration in covenant in C. B. on an indenture of demise, for the defendant's assignees not permitting the plaintiff to make a drain, pursuant to a covenant with the defendant the lessor, administratrix of her late husband, since married. Plea, that a drain might have been made in a passage, and that the defendant gave him free liberty so to do, which he refused. Demurrer and joinder, 2. *Mod. Ent.* 46.
- Declaration in covenant by an assignee against an executor for permitting the premises to be out of repair; several breaches assigned; *proferit* of the will. Plea, performance specially to each breach assigned. Demurrer to the first part of the plea, 2. *Mod. Ent.* 50.
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344. Declaration in covenant by *master of a ship* against the freighters on a charterparty for not fully loading her, and not paying full freightage, and for primage, &c. Plea, 1st, general issue; 2d, that the ship was detained on her arrival at Malaga upon quarantine, and that goods could neither be loaded nor unloaded during that time. (*See Pleas, post.*)

350. Declaration in covenant on a charterparty of affreightment, when the freighter would only pay a part.

352. Declaration for demorage at both loading and unloading ports against the freighter.

355. Declaration against the freighter on a charterparty from London to the West-Indies, and thence to Ostend, averring that plaintiff, by order of the defendant's agent at Guadaloupe, took in a cargo of French troops for l'Orient, which he landed there for the balance of freight, according to a certain tonnage per month, and port charges, made payable in bills at different times.

362. Declaration in covenant on a charterparty for demorage at the loading port, and also for freight and pilotage,

364. &c. Plea, *non est factum*; 2d, that defendant hath paid the freight, &c.; 3d, that defendant did not keep the ship on demorage for thirty days, but only twelve days, for which he paid plaintiff.

362. Declaration on charterparty for demorage, and for not loading the ship with as much as she could carry, and for pilotage, &c. Plea, 1st, *non est factum*; 2d, that the ship did not proceed. (*See Pleas.*)

37. Declaration in covenant against the master, at the suit of the assignees of the freighter, who had become a bank-

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364. Declaration for demorage and not completely load-
366.369.ing the ship. Plea. Replication. (*See Pleas*). De-
371. murrer and joinder.

358. Declaration, plaintiff was possessed of a ship, which he let to hire to defendant for a certain time for a certain sum of money, and defendant was to pay all expences that should arise, such as pilotage, port charges, &c.; and if defendant kept the ship over the time agreed for, he was to allow plaintiff so much per month, the ship was detained three months longer than she was let for, which defendant not only refuses to allow for, but refuses to pay the expences that accrued for pilotage, &c.

372. Declaration by the East-India Company on a charter-
375-377.party of affreightment. Plea, that the ship was
378. wrecked. Replication, defendant deserted the ship.

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That another covenanted by and executed charterparty of affreightment jointly with defendant, -

Declarations in covenant in B. R. on a charterparty of affreightment against the affreighters, where one is recited to be outlawed; 1st breach, for not paying freight; 2^d, port charge; 3^d, for not manning the vessel, -

Plea, protesting against the averments in the declaration, taking issue on each breach assigned, -

Declaration in covenant on a charterparty, whereby it was agreed to employ a ship to go from St. Helena to the first port in France, as a cartel with prisoners, as soon as sentence of condemnation should be passed on the ship, which had been taken prize to her majesty, -

Demurrer special with causes. (*See demurrer to declaration*).

Declaration in covenant on a charterparty as to freight for nine hundred tons, but company to bring as many goods as the ship would bring, paying freight; and that no claim could be admitted, or allowance made for short tonnage, to be found and made to appear on her arrival on a survey by four shipwrights in the river Thames, and unless the same be certified by the company's president and agent abroad. Plea, that ship was not capable of taking more than nine hundred and three tons; and that allowance for short tonnage was not certified by the company's president, &c. Replication, that plaintiffs requested them to certify, but they refused, -

2. R. Pr. B. R. 191

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- That defendant hired a ship at the rate of four pounds for every ton of goods loaden in the ship, to wit, one moiety within thirty days, and the remainder within fifty days after her unloading, *Tho.* 104. *Cl. Aff.* 307.
- Breaches, for not paying plaintiff bounty money allowed by act of parliament, for shipping off corn, which the defendant was authorized to receive for the plaintiff by writing, &c. *Clift.* 219.
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For permitting houses, edifices, and the chancel, to be ruinous for want of repair, and two hundred perches of hedges and ditches, 1. *Bro.* 132.

For suffering house and granary to be and remain out of repair, not covering it house nor repairing walls, not spreading dung upon fresh land, and not keeping as many sheep as the common would sustain for folding and manure of the fresh lands, *Ibid.* 143, 144.

That part of the house was unroofed, joists of the chambers became putrid for want of repairing, doors of the house broken, wharfs ruinous for want of beams, pales and hedges broken, &c. for want of repair, vessels, cistern, and canals in decay, *Vid.* 121.

For suffering house to be out of repair for want of foundation work, *posterum, transcurum, tignarum, co-opture, obliuionis* of the glass of the windows, and of the interior work, *Vid.* 135. *Chfi.* 214.

That the chancel was out of repair, doors of the chancel broken, windows ruinous, walls broken and out of repair, likewise the granary in decay, 1. *San.* 107. 2. *Ven.* 54.

By an *executrix*, for not repairing the premises after a *re-entry*, *Bro. Met.* 98.

For suffering house to be pulled down, and ruinous, and so to remain, 2. *San.* 418.

That the defendant, lessee, suffered the house to be uncovered, which he did not repair, but suffered it to go to ruin, *Ibo.* 98.

For suffering house and barn to be in decay and fallen down, by which the timber became putrified, *Br. R.* 143.

That house is uncovered for want of repair, glass windows broken and in decay for want of glazing, leaden pipes, with aqueducts, broken and destroyed, *Br. R.* 157.

That *guttera* leaden, two chimnies, and one pair of stairs, parcel of the house, was torn, pulled down, and prostrated, which defendant did not repair, but suffered to be out of repair, *Vid.* 128.

That the defendant did not require timber to repair the premises, but permitted them to decay, and at the end of the term left the premises in several places greatly out of repair, *Br. R.* 161.

For suffering the chancel to be uncovered, and the walls, doors, and pavement to be ruinous, and the glass of the windows to be broken, and the windows only a little glazed.

glazed; *per quod*, the large timber of the chancel became putrid, likewise the beam to be out of repair and in decay, by which the large timber became rotten, and so left the premises at the end of the term, 2. *Ven.* 54. Demurrer thereto, *Chjt.* 214.

For suffering the house to be prostrate and totally ruined for want of support, and so leaving it at the end of the term, 2. *Ven.* 123.

For suffering the pavement of the area to be broken up, and the water falling upon the walls and the area of the cellar, so that the walls and area became rotten, and for so leaving them at the end of his term, 2. *Ven.* 123.

For suffering the covering, sides, windows and walls of four other houses to be out of repair and in decay, and so leaving them, *Ibid.*

Breaches relating to Land and Agriculture, Rent, &c.

That defendant did not discharge plaintiff from the annual rent of seven pounds, and all his arrears, *Ro. Entr.* 170.

For several sums for rent for one year unpaid, and for several parcels of land to be paid at several feast-days, or within twenty one days, *Wt. Entr.* 151.

Breach assigned for non-payment of rent, 1. *San.* 230. 2. *San.* 263. For rent arrear half a-year, *Wt. Entr.* 137. 151. *Vid.* 128. For a whole year, 1. *San.* 235. At two feast-days, *Vid.* 142. 1. *San.* 235. For rent, *Chjt.* 206. For rent for two years in arrear, payable quarterly, *Mo. Entr.* 164. 2. *Vent.* 231, 232. For five years and half, *Vid.* 143. For three years and half, *Ibid.* 129.

On agreement that defendant, on the death of either, should render the best beast in the name of a heriot, or fifty shillings in lieu thereof, at plaintiff's option; plaintiff chose the money, but defendant did not pay, *Br. R.* 145. 2. *San.* 163.

That defendant, lessee, did not leave the lands demised at the end of the term, *Br. R.* 167.

That defendant did not pay the rent due to the king; *per quod*, goods and chattels of plaintiff were taken and levied for the rent, *Br. R.* 164.

On articles of agreement to enjoy, &c. Breach that plaintiff, by himself and servants, put cattle in the lands and depastured, by reason of which he, before the end of the term, impleaded plaintiff in a plea of trespass, and recovered judgment against him with damages, which plaintiff was obliged to pay, 2. *Vent.* 60.

On covenant that plaintiff should enjoy possession of part of the buildings demised until he was ejected by law. Breach, that defendant disturbed plaintiff before, *Br. R.* 153.

On covenant for quiet possession. Breach that plaintiff was ejected by a stranger before the end of the term, *R. Entr.* 171. 2. *Inst. Cl.* 29.

Against an assignee of lessee for non-payment of rent, *Mo. Intr.* 120.

By an executrix for non-payment of rent, and for arrears of rent, *Bio. Met.* 102.

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On an assignment of letters-patent of the office of secretary of the island of Barbadoes, for rent reserved, *Bio. Met.* 91.

For that defendant did not well and sufficiently plough and sow the plaintiff's arable land, nor carry his coals, &c. *pro ut. Bro. Pa. Me.* 149.

That defendant, not giving notice, or expressing any dissatisfaction to hold the premises before a certain feast-day, did not pay at the feast day following, according to covenant, 1. *Bio.* 145.

By husband and wife against defendant, on the demise of the wife only, *Ra. Entr.* 136.

By an executor, *Reg.* 165. Against an executor, 166.

By husband and wife executrix, *Co. Entr.* 114. By executor of executor in B. R. *Abs.* 150. By executor against assignee, 1. *Dr.* 73. By the assignee, *Reg.* 105.

Repairs and Agriculture.

That defendant, lessee, did not put the several houses in repair, according to agreement, *Her.* 269. That defendant permitted the house to be uncovered, which he did not repair, but suffered it to go to ruin, *Ra. Entr.* 162. Permitting barn and stable to be unroofed, and the walls of the barn, containing six perches, to be out of repair, *Her.* 287. That defendant left the hall ruinous at the end of the term, and out of repair. Replication that he did not leave the wall ruinous, *Ra. Entr.* 162. For permitting ten bars and two gates of the clofe to be broken and carried, and the bars, gates, ten perches of wall, and ten perches of hedges of the other clofe to be rotten, broken, and carried away, *Her.* 287. For permitting the walls of the clofe, containing ten perches, to be thrown down and destroyed for want of repairs, *Her.* 287. That the hall, kitchen, two chambers, and pantry, parcel of the messuage, were totally ruinous and in decay, and for want of repair, and so remain, *Her.* 288. That several houses, places, and things were made worse, broken, and torn away, and divers other parcels and things attached to the premises were torn and carried away, 2. *Cro.* 329. That the mill, through defendant's default, was thrown down and wasted, and the timber thereof carried away, *Her.* 276. That defendant caused a water-course running to the mill up to be stopped, *Co. Entr.* 67.

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That defendant did not leave premises demised at the end of the term, 3. *Br.* 33. *Her.* 279.

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Defendant agreed to pay all charges on the lands demised, and did not pay fifty shilling; taxed on lands by commissioners for a subsidy granted to the king by parliament, *Ra. Entr.* 136.

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Against an executor, for not repairing a house and barn, *Br. R.* 143.

By an assignee against an executor, for not repairing a house, and the utensils contained in the schedule, *Id.* 117.

For want of several reparations, and for converting pasture into tillage, *Clift.* 306. By baron and feme, the wife being assignee of tenant in fee, against lessee for years, for default of repairs in fences, &c. *Mo. Ent.* 135.

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Declaration by lessees of a shed and counting-house, with the use of a wharf and *blind dock* at a certain rate *per barge*, for not permitting plaintiffs to bring their barges up the wharf and blind dock, but cutting them adrift, and preventing the plaintiff's landing lime, although they tendered the stipulated price, whereby plaintiffs were hindered in their business.

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- On a warranty of lands by fine. Breach that one H. S. evicted him, but was bad for not saying what estate H. S. had, 1 *San.* 176.
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- Against an *administratrix* upon certain tickets assigned over by the intestate to the plaintiff, in lieu of a debt, and covenant that if the plaintiff did not receive the money within two years, that he the intestate would make it good, *Pro. Vad.* 128.
- That defendant did not provide sufficient hay and oats, with straw, for horses, according to covenant, 1. *Bio.* 132. Bar that he did.
- That defendant did not procure any discharge called a *quietus* from the office of the pipe, by which testator was compelled to pay divers sums of money. *Tho.* 102.
- Covenant to buy all the wine of plaintiff that defendant should expend in his inn. Breach that defendant bought several vessels and casks of wine of the persons named in the declaration, which plaintiff expended in his inn, *Wi. Ent.* 142. Plea protesting that he did not buy of the persons named, for plea that he did not sell the said wine in his tavern. Demurrer.
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315. Plea to covenant on articles of agreement entered into between the master and the defendant, and other the officers and seamen, &c. for non-payment of wages. 1st, *Non est factum*; 2d, plea of set-off; 3d, plea, that it was agreed by the said articles, if any person should mutiny, he should forfeit his pay to the owners; 4th plea, discharging and dismissing plaintiff, in order to put an end to the mutiny.

321. Plea to bill against an attorney of C. B. in covenant on articles of separation between defendant and plaintiff his wife; defendant was to allow plaintiff an annuity. Breach for not paying, craving oyer of the articles, protesting that the two half-yearly payments did not become due, plaintiff and wife continue to live separate, by reason whereof she became entitled to receive the annuity of one hundred pounds, according to the tenor of the articles. Imparlance; replication; rejoinder.

330. Plea to covenant in the exchequer by *baron and feme*, on articles of agreement to become a co-partner in trade with a *feme sole*, according to the custom of the city of London, carrying on the trade of a printer, carver, and gilder, that no articles of co-partnership, with necessary additional covenants, have been legally made, according to the effect of the indenture for the performance thereof, that a moiety of lease has not been assigned, that defendant was drawn in by plaintiffs, who falsely represented trade to nett eight hundred pounds *per annum*. General demurrer; joinder in demurrer.

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75. Plea of *condition precedent* to an action of covenant, that plaintiff was bound in a covenant to defendant, which was a condition precedent to the performance of defendant's covenant, upon which this action is brought, and that defendant required plaintiff to perform same, which he refused.

84. Plea to an action of covenant for not granting lease, and not fitting up house; 1st, that defendant was ready to execute a lease had it been tendered to him; 2d, that he did fit up the house.

89. Plea to a declaration for breach of covenant at the suit of assignee.

91. Plea to performance of covenant, breaches assigned that defendant did not finish the dwelling-house in workmanlike manner, and did not build stables, &c.

- Defendant pleads specially to the governor of Barbadoes and his secretary, that the secretary is an office of administration of justice, and therefore the agreement is corrupt and void by statute. Replication; rejoinder; demurrer; and judgment for plaintiff by rule of court, *Bro. Met.* 122.
- Plea of the statute 5. *Edw.* 6. c. 16. against selling of offices, *Bro. Met.* 114. Demurrer and judgment for plaintiff.
- That defendant offered to deliver the corn, but plaintiff refused, & *uncore priſt.* Replication did not offer; and issue, 3. *Inſtr. Cl.* 396.
- Plea that he provided the provost with horses according to covenant, 3. *Inſtr. Cl.* 386.
- Plea, protesting that he did not buy the casks of wine of the persons in the declaration mentioned; for plea, that he did not sell the wine in the inn. Demurrer, *Wt. Ent.* 144.
- Plea, that defendant educated plaintiff's children, viz. T. B. till he came of age; A. and F. till they died, and S. B. till the time of suing out the writ. Replication, that he did not educate, *Ra. Entr.* 171.
- Breach assigned for non-payment of money. Plea, that defendant did pay, 3. *Inſtr. Cl.* 417. Replication, did not pay, and issue.
- Plea, that one R. freely gave and granted to plaintiff the rectory for life, which was of a greater annual value than the annual pension of four pounds, given by defendant. Replication, that R. granted to plaintiff the rectory under an agreement to pay so much, and traverses the free gift, *Br. R.* 167.
- On a writing to build and repair, which writing the defendant after sealing took and detained, 2. *Inſtr. Cl.* 294.
- That defendant was always and now is ready to account with plaintiff, but plaintiff refused, and traverses that plaintiff was ready to account, *Vid.* 138.
- That defendant offered to deliver corn to plaintiff, but he refused to receive it, & *uncore priſt.* Replication that he did not offer, *Ra. Entr.* 134.

Pleas, Replications, &c. to Declarations on Charterparties of Afficement (11).

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347. Plea to covenant by master of a ship against the freighters on a charterparty, for not fully loading her, and not paying full freightage, and nor primage, &c.; 1st, general issue; 2d, that ship was detained on her arrival at Malaga, upon quarantine, and that goods could neither be loaded nor unloaded during that time, to the first breach; 3d, they did not keep the ship on demorage, to the 2d breach; 4th, that their assigns did fully load at Malaga, to the said 2d breach; 5th, that goods could not be procured completely to load her at Malaga, &c. but they offered to load her completely if they would have proceeded to Barcelona, which he would not do, but made up the loading with other persons goods; 6th, to the last breach, that no such sum became due for the primage, &c.

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364. Plea to declaration in covenant on a charterparty for demorage at the loading port, and also for freight and pilotage, &c.; 1st, *non est factum*; 2d, that defendant hath paid the freight, &c.; 3d, that the defendant did not keep the ship on demorage for thirty days, but only twelve days, for which he paid plaintiff.

366. Plea to declaration in covenant on a charterparty for demorage, and for not completely loading the ship; 1st, *non est factum*; 2d, that the ship did not unload her outward bound cargo according to the form of the charterparty; 3d, that the ship did not, after she was so unloaded, proceed with all convenient speed to her loading port; 4th, that the plaintiff did not give notice of the arrival of the ship to the agent of defendant; 5th, that the ship unloaded her cargo at a different port, and was detained by order of the plaintiff, whereby the defendant was prevented from getting a full cargo; 6th, that the ship did not with all convenient speed sail from England for the port of A. B. and that after she sailed, she arrived at the port of D. where the plaintiff kept her a much longer time than was necessary for the putting her in proper condition for completing her voyage, and that after she was so completed, she sailed to another port then mentioned in the charterparty, whereby the defendants were prevented from procuring any homeward cargo; 7th; that defendant's agent did not keep the ship on demorage, imparlance, and continuances from term to term. Replication to the last plea, that the ship did unload at the port mentioned in the charterparty; 2d, that plaintiff did not keep the ship at her unloading port a longer time than was necessary; 3d, that the plaintiffs were not prevented from supposed delays of defendants from procuring a cargo. Demurrer. Joinder.

375. Plea to covenant by the East-India Company of a charterparty; 2d, that the ship was wrecked. Replication, that the defendant deserted the ship. Rejoinder and issue, suggestion that one of the sheriffs hath interest, and pray the writ of *venire* to be directed to the other sheriff.

Plea that the ship was not ready to sail and depart at the time, or proceed on her voyage with the dispatch that she might, *Cl. Aff.* 309, 310, 311. 3. *Inst. Cl.* 430.

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364. Plea, 1st, *non est factum*; 2d, that defendant hath paid the freight, &c.; 3d, that defendant did not keep the ship on demorage for thirty days, but only twelve days, for which he paid plaintiff.

Pleas, Replications, &c. to Declarations in Covenant on Policies of Assurance on Ships and Goods (12).

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380. Plea to declaration against the London Assurance, on a policy of assurance of goods, &c. ship run aground on the sand within the port of London; *non infregit*, &c.

386. Plea on a policy of assurance, ship was taken by enemies, 2d Count, that the policy was made in trust for G. W. and W. B. that the assureds did labour, &c. but defendant did not contribute; 3d Count, did not pay a certain loss, making a small deduction; 4th Count, averment that charges of labour, &c. amounted to eight hundred pounds, and that defendant refused to contribute, and *non infregit conventiones*.

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77. Plea to declaration of covenant against owners of a ship for their captain not calling at a particular island; that he offered to call and to permit plaintiff to pilot her in, which he refused to do by reason of bad weather, and traverses that the captain refused to permit him.

Plea, protesting that the ship in her voyage was not stout; for plea, that the Spaniards attacked her so that ship could not make a safe passage, 1. Bro. 127. 3. *Infr. Cl.* 430.

Pleas, Replications, &c. to Declarations on Policies against Fire (13).

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399. Plea (to a declaration by assignees of bankrupt in covenant on a policy of insurance against fire on dwelling house, stock in trade, &c.; loss amounted to seven hundred pounds), performance of conditions in the printed proposals, the certificate they delivered did

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request the minister to sign; 2d Count, that the Company have not submitted to arbitration); 1st, bankrupt not interested; 2d plea, fire happened by fraud and evil practice of bankrupt; 3d, that minister and churchwarden did not refuse to sign certificate without reasonable and probable cause; 4th plea to 2d Count like the 1st; 5th plea like 2d; 3d plea to 2d Count, have not procured certificate from minister, churchwardens, and respectable inhabitants, &c. Replication, taking issue on all the pleas except the last, and to that bankrupts did, as soon as possible, produce two inhabitants, but that the ministers and churchwardens without any reasonable cause refused. Rejoinder, that they did not wrongfully refuse. Surrejoinder and issues, jurors respited, *postea*, 1st issue, 2d issue, to 3d issue, to 4th issue, to 5th issue, to 6th issue, three thousand pounds damages. *Curia advisare vult*, continuances by *dies datus*, assignment of error.

408. Plea to declaration against the society of the Liverpool fire-office, on a policy of assurance of the dwelling house, stock in trade, and goods of defendant, when the original deed was lost; proposals set out; that plaintiff was not interested in the goods, &c. burnt, and that they were burnt to defraud, &c. Replication to 2d plea, denying the fraud, *mittimus* to the justices at Lancaster, *venire*.

414. Plea to declaration at the suit of assignees of a bankrupt against the London Sun Fire-office, on a policy of assurance on household goods, that goods were fraudulently burnt, and that bankrupt had no interest in the goods insured. Replication, taking issue on the fraud.

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86. Plea by the Directors of the Sun Fire-office to an action of covenant, on a policy of assurance from fire, that the goods, &c. were not burnt by fire in the said house; 2d, that plaintiffs fraudulently set the house on fire.

90. Plea to declaration on policy of assurance against fire, *non infregit conventionem*.

Pleas, &c. to Declarations on Indentures of Apprenticeship (14).

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416. Plea (to declaration on an apprentice's indenture, brought by the apprentice against his master for dismissing him from his service, against the will of the apprentice, not instructing him in his business, not finding him in cloaths, &c.; plaintiff an infant); that he voluntarily absented himself.

421. Plea (to declaration in B. R. in covenant on an indenture of apprenticeship, by the father of the apprentice against his master, for not teaching his business, and dismissing; states that the indenture of apprentice is in defendant's custody, therefore plaintiff cannot produce it in court; the son entered into defendant's service; 1st breach, did not instruct the apprentice; 2d breach, turned the apprentice away, and did not instruct or provide him with board and lodging); 1st, as to the 1st breach, that he did teach him, and issue; 2d, to the charge for dismissing him in 2d breach, that he did not, and issue, as to the residue of that breach, that he ran away, and concluding with a verification; plea to 2d breach, that plaintiff and defendant agreed that the latter should procure another assistant, plaintiff's son should leave defendant; another plea to 2d breach, that the apprentice misbehaved himself to his said master so that defendant could not keep him. Replication *de injuria* to the third plea, and issue. Replication to 4th plea, during the agreement, and issue. Replication to 5th plea, *de injuria*, and issue.

425. Plea (to declaration by an infant apprentice against his master, for not instructing him in his trade, and providing him with meat, drink, &c.) that defendant taught plaintiff according to the agreement; 2d, that plaintiff absented himself from being instructed by him; 3d, that defendant did send plaintiff meat and drink; 4th, that plaintiff absented himself from defendant's service, and that defendant whilst, &c. did find, &c. Replication, &c. to two pleas, protesting that defendant did not keep, &c.; plaintiff avers that he did not absent himself, &c.; to plea, protesting that plaintiff did not find sufficient meat and drink; plaintiff avers that he did not absent himself. Rejoinder.

429. Plea (to declaration in covenant by apprentice against his master for discharging him before the expiration of his term, not finding, &c. nor paying wages; 1st breach, discharged plaintiff; 2d, did not find him in board and lodging; 3d, did not pay him his stipulated wages); to 1st breach, that defendant did not discharge him; to 2d breach, that plaintiff and

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defendant were shipwrecked in the West Indies ; that defendant procured plaintiff a passage home, but that he quitted the ship, and that defendant provided plaintiff with board and lodging as much as in his power lay, under these circumstances ; to 3d breach, that he paid wages for first year. Replication to 2d plea, that plaintiff after quitting the ship returned to defendant and offered to serve him, which defendant refused. Rejoinder and issue.

435. Plea (to declaration in covenant against defendant for not finding plaintiff, who was his apprentice, with meat, drink, and lodging, and medicines and medical assistance during the sickness of plaintiff ; whereby he was obliged to find them himself), performance according to the custom, &c.

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93. Plea to declaration on indenture of apprentice.

94. Plea to a declaration for seducing and harbouring the plaintiff's apprentice, that the plaintiff broke his covenants with the apprentice, the defendant's son, and used him so cruelly that he ran away to and took refuge in the defendant's house, and that they went together and made their complaint before a magistrate, who summoned the parties, and ordered a compromise, which took place according to the form of the statute.

Plea by apprentice in bar *performance*, and traverses the several breaches in the Count, 3. *Inst. Cl.* 389. Replication, maintaining the Count and issue.

Plea, protesting, &c. that plaintiff delivered goods to be accounted for, and that defendant accounted with plaintiff, and he agreed to the account, and the money was thereupon paid, which plaintiff received in full satisfaction, *Vid.* 80. *See Customs of London*, 330.

Plea by master, that plaintiff left his service without leave, and that defendant refused to take him back again, traversing that he dismissed. Demurrer and joinder, and judgment for plaintiff, *Vid.* 84.

Plea by master, protesting, &c. that he found sufficient meat, &c. and that the servant did not continue the whole time, but left the service for the space of a month. Replication to plea to finding, &c. issue ; to the other part of the plea, maintains his declaration, and traverses that the servant left defendant's service, *Vid.* 140. 3. *Inst. Cl.* 389.

Plea to declaration against an apprentice in London, of a judgment in the mayor's court on the custom of the city for an apprentice (who was not enrolled the first year) to leave his master ; and traverses that he left plaintiff's service before judgment, *Vid.* 150.

Plea by apprentice that he left with leave, and traverses that he wasted goods committed to him for plaintiff's use, and traverses that he did not know there was a loss, and issue ; that he did not commit fornication, and issue ; that he did not play at unlawful games, and issue ; that he went to taverns by his master's order to bring wine, and traverse, &c. Replication, maintains the Counts and issue on the traverses, 1. *Bro.* 130.

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- Plea, that plaintiff left defendant's service, and traverses that defendant discharged. Special demurrer, *Vid.* 84. Custom of London, 345.
- Plea, that by stat. 5. Eliz. that it should not be lawful for any person of a certain trade to take an apprentice (unless his son), except the father or mother of such apprentice should have forty shillings per annum, certified by three justices, under seal. Replication, that the father at the time of the executing the indenture, was seised in fee of lands of the annual value of forty shillings, certified and enrolled according to the form of the act. Rejoinder, that defendant's father was not seised of lands. Special demurrer, for a departure from the plea, *Wi. Ent.* 137. the like by custom of London, 338. *Ro. Ent.* in debt, 193.
- Plea, after oyer, &c. protesting, &c. that defendant's son did not embezzle the money and goods, and issue, *Wi. Ent.* 155. *Hob.* 217.
- Plea, protesting, &c. that defendant offered to serve plaintiff for a term, which plaintiff refused, and traverses that he refused to serve plaintiff, *Br. R.* 140. Demurrer, 3. *Inst. Cl.* 388.
- Plea, that plaintiff discharged defendant from his service, and that defendant behaved faithfully till that time, *Priv. London* 324.

Pleas, 1. by Lessees, to Declarations by Lessors. (15)

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517. Plea (to declaration in covenant by the assignees of a reversion against defendant, for leaving premises demised to him out of repair, taking away the locks, &c.), that at the end of the demise the premises were not yielded up out of repair : 2d plea, that at the end of the demise defendant delivered up the premises, with every thing that was fixed to the freehold.
522. Plea (to declaration by lessor against lessees ; 1st, for cutting trees and stubbing up underwood in the garden hedge ; 2d, for under-letting the premises to one N. R. during whose occupation great waste was committed by a main beam being taken away from the barn and a cow-house converted into a blacksmith's shop ; 3d, for not repairing. 1st, Stubbing up garden hedge ; 2d, under-letting, &c. ; 3d, not repairing : 2d Count, omitting the covenant not to let or assign the premises, stating an assignment to N. R. and that he cut the trees, stubbed up the underwood, and neglected to repair.) To the 1st Count, 1st, that defendant did not cut the trees nor stub up the underwood ; 2d, that they did not let the premises to N. R. ; 3d, that they did repair ; 4th, as to all the breaches in the last Count, that the premises never came to N. R. by assignment ; 5th, as to cutting the trees in that Count, that N. R. did not cut them ; 6th, as to the want of repairs, that N. R. did repair, and issues joined on each of the pleas.
527. Plea to declaration in covenant, lessor against lessee, for non-payment of rent and not repairing ; 1st, *non est factum* ; 2d, rent in arrear ; 3d plea, payment of the rent ; 4th plea, set off ; 5th plea, tender of payment ;

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6th plea to last breach, that premises are not out of repair. Replication to 3d plea, protesting the defendants did not pay plaintiff the money, for replication says, that he did not accept it in satisfaction.

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11. Plea to declaration in covenant in C. B. by assignee of lessor of copyhold premises against executor of lessee, to the uses of his will, for not yielding up in repair, &c. 1st breach, for not yielding up in repair; 2d breach, for waste, lopping trees, &c.
11. 2d Count, omitting all mention of the copyhold part of the premises; plea 1st, that nothing had come to him as executor; 2d plea, *plene administravit*; 3d, *non est factum*; 4th, to first breach, performance; 5th, to second breach, performance; 6th and like plea to last breach; 7th, to covenant, Count first, *non est factum*; 8th, to last Count, as to first breach; 9th plea, 10th plea, 11th plea, 12th plea, 13th plea, acceptance of certain fixtures as a satisfaction; 14th plea. Replication, issue on each plea.

16. Plea to declaration against *baron* and *feme* and others, the *feme* and the others being assignees of the lessee of coal pits, for the various breaches of covenant before and after their marriage, by virtue of which said demise, &c. residue of the term came to Smith, Sarah, and Charlotte, the wife of the other defendant, by virtue, &c. Charlotte intermarried with John Oliver the other defendant, by virtue, &c.; although plaintiff had performed, &c. yet protesting. 1st Breach, of seventeen shillings, of said rent, of nine shillings, and thirteen years, ending the twenty-sixth of March 1782, or the twenty-fifth of March in that year were in arrear. 2d Breach, defendants, Smith, Charlotte, and Sarah, before the marriage of Charlotte and Oliver, and said other defendants and of Oliver, since, &c. from 2d of March 1770, to 1st of March 1782, have raised and sold ten thousand weys of coals, the said coals not exceeding one thousand weys in each year, whereby they were liable to pay to plaintiff four thousand seven hundred and fifty pounds, at nine shillings and sixpence per wey, yet have not paid, &c. 3d Breach, though said premises came to Smith, Charlotte, and Sarah in three years after the date of the lease, yet they, before the marriage, and John Oliver, &c. since, did not continue to try for coal, and use their utmost endeavour to get into working thereof in three years from the date of the lease. 4th Breach, in March 1773, defendants sunk a pit, and found coal; though not prevented by unavoidable accident, in one month after, and from thence hitherto, desisted working. 5th Breach, nine hundred weys of coal might

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have been raised yearly after sinking said pits, without working the pillars, yet defendants have not paid nine shillings and sixpence *per wey* for every deficient of nine hundred weys raised in each year since the sinking of the said pit. 6th Breach, that original lessee and defendants, his assigns, and Smith, Charlotte, and Sarah, before the marriage, and O. since have not paid nine shillings and sixpence *per wey* yearly for nine hundred weys till pit was sunk. 7th Breach, defendants have not kept the coal raised from said premises, separated from coal raised from other land, but have mixed five hundred weys raised from said premises with coal raised from John Popkin and Sir W. Lewes. 8th Breach, defendants have not sold all the coal raised whenever they could, for a merchantable price, but have suffered five hundred weys to remain unsold, though they could have sold the same for a merchantable price. 9th Breach, defendants made a waggon way in said demised premises, but have not planted sides with quick. Pleas, imparlance to Easter; 1st plea, as to all the breaches; lessee died, leaving J. T. Elizabeth, wife of defendant, J. S. said Charlotte and Sarah, executors, and said James, John Smith, and Elizabeth, in right of said Elizabeth and Charlotte and S. duly proved the said will, and became entitled to said demised premises for the residue of the said term, said C. married J. O. whereby said J. J. S. and C. in right of said E. J. O. and C. of said Charlotte and S. became entitled to said demised premises for the residue of said term, without this, that the residue of the said term came to said Smith, C. and S. as plaintiff hath alledged, without this; 2d plea, to first breach, that nothing of said rent is in arrear; 3d plea, to second breach, defendants S. C. and S. before said marriage of J. O. and C. and said defendants, and J. O. since, have duly accounted for and paid said nine shillings and sixpence, for all coals sold and shipped, and sent away, for every wey raised and landed by them, except coals reserved to plaintiff, or to be used at any fire-engine for draining the work, so in proportion for any greater or lesser quantity than a wey; 4th plea, to third breach, that the residue of term, estate, and interest of the said C. the lessee, did not come to defendants, Smith, Charlotte, and S. solely by assignment thereof, in manner aforesaid; 5th plea, to third breach, said defendants, Smith, Charlotte, and S. before said marriage, and said defendants and J. O. since, and after said assignment, and till the end of said three years from the date of said lease, did continue to try for coals, and did use their utmost endeavours to get into working thereof; 6th plea, to fourth breach, defendants at all times, after sinking said pit, did effect-

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tually work said coal mines; 7th plea, to so much of fourth breach as relates to said defendants and effectually working said mine till twenty-sixth of May 1780, defendants, at all times, after sinking said pit, till said twenty-fifth of May, did effectually work said coal mines; 8th plea, to residue of said fourth breach, defendants at all times since the day and year last aforesaid, have been hindered from working said coal mines by an unavoidable accident, to wit, by water filling and overflowing said coal mines, and unavoidably remaining there; 9th plea, to so much of fifth breach as relates to defendants not raising nine hundred weys every year till twenty-fifth of March 1780, defendants did thereby after making the said pit and getting at coal, raise nine hundred weys, and pay plaintiff nine shillings and sixpence for each wey; 10th plea, to residue of fifth breach, defendants at all times, from said twenty-fifth of May, since said pit has been sunk and coals got at, have been hindered by an unavoidable accident, to wit, by water filling and overflowing said coal mines, and unavoidably remaining there, from working and selling any merchantable coal; 11th plea, to sixth breach, by a *proviso* in the lease it is declared, that if, due diligence and proper methods used, there should be found sufficient good and merchantable coal to work nine hundred weys a year, John Channey and his assigns should be discharged from working said nine hundred weys, and all payment for not working same, defendants during the first three years from the date of the lease, and at the end thereof, were hindered by unavoidable accident from sinking any pit and getting any coal, to wit, by sand and water running and flowing into divers parts which they endeavoured to sink; 12th plea, to seventh breach, defendants have kept the coal raised on said premises separate from coal raised by them out of other lands, until the same was sold; 13th plea, to eighth breach, defendants did at all times, &c. sell such coal as was raised wherever they could get a merchantable price; 14th plea, to ninth breach, defendants did plant said waggon way with quick; 15th plea, to all the breaches, set-off for money paid, money lent, had, and received. Replication; to 1st plea and tenders, issue on the traverse; demurs to 4th plea, causes; replication to pleas as to the residue of the fourth breach, that defendants have not been hindered from working the said coal mines in manner, &c.; replication to plea to residue of fifth breach, that defendants, since pit has been sunk and coal got, have been hindered by an unavoidable accident from raising and selling any merchantable coal; replication to plea to sixth breach, that defendants, during said three years, and until and at the end thereof, were

not hindered by unavoidable accidents from sinking a pit and getting coal in said premises in manner, &c. Demurrer to last plea. Joinder in demurrer to 4th plea; defendants join in demurrer to last plea. Continuance by *cur. ad. vult. dies datus*.

Plea to declaration against assignee of lessee for not repairing; 1st, *non est factum*; 2d, that the respective defendant's interests and estates in premises in respect whereof covenants were made, were merged and extinguished by the reversioner in fee purchasing the term and equity of redemption; 3d, that the estates and interests in premises in respect whereof covenants and each of them were made were determined; 4th plea, that the covenants were made with plaintiff in respect of his equity of redemption, and not otherwise, and that the equity of redemption was purchased by the reversioner in fee, and thereby the term was extinguished; 5th plea, that all estate and interest of plaintiff in premises became wholly ended and determined. Demurrer, for that defendant had alledged as a fact, that the covenants were made in respect of the respective estates and interests, which is not matter fit to be averred, or upon which issue can be taken, and it does not show in respect of which of the estates, interests, covenants were made, the other causes were similar to the 2d plea, following the language of the plea; continuance *postea*, judgment signed.

Plea to breach of covenant, that in consideration of a surrender of a term before its expiration, plaintiff released the damages arising from the breach of covenant.

Plea in covenant, that defendant kept the premises in good repair, pleaded by assignee.

Another plea to breach of covenant for not repairing, that premises were in good repair, and not ruinous.

Plea to breach of covenant for spending compost elsewhere than on premises, that he hath spent all the compost on premises, and not elsewhere.

Plea to declaration in covenant for non-payment of rent; 1st, payment of rent; 2d, payment of additional rent, for money laid out in repairs; 3d, set off for money had and received.

Plea to covenant for non-payment of rent, that he tendered the rent on the premises at that day, and that nobody was there to receive it, and *tout temps pris, et uncore pris*, and payment of money into court.

Plea to breach of covenant for non-payment as to part of the rent, *nil dicit* as to residue, that defendant (who was assignee of lessee) before it became due had assigned to a third person. Replication, the defendant did not assign.

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88. Plea to breach of covenant for non-payment of rent; 1st, that before any rent became due, one J. M. entered upon the premises, and expelled defendant before residue of rent became due. Replication to the 1st plea, protesting that J. M. had no right of entry, and that he did not enter; for replication, that J. M. did not expel defendant; to the 2d, protesting that plaintiff did not enter; for replication, that he did not expel defendant.
91. Plea of performance to an action of covenant.
91. Plea of payment to an action of covenant.
92. Plea, that defendants are not assignees.
97. Plea, *non est factum*; 2d, that defendant was at all the expence of ditching according to covenant.
73. Plea, 1st, that defendant did maintain, support, &c. according to form, &c. of said indenture; 2d, as to the thatch of buildings, that it was blowed off by wind and tempestuous weather, and although plaintiff had used all due diligence to repair, &c. same, &c. yet sufficient time for that purpose is not elapsed; 3d, that he did not carry off dung, &c.; 4th, that he carried dung, &c. off the premises by the license of plaintiff, conclusion to the country; 2d plea, verification; 3d plea, to the country; 4th plea, verification.
75. Plea, 1st, *non est factum*; 2d, expulsion by plaintiff of the whole premises; 3d, rent not in arrear.
78. Plea to declaration in covenant at suit of lessor against assignee of lessee, that premises did not come to them by assignment; 2d, that before the rent became due defendant assigned premises to one C. P.
79. Plea (to breach of covenant for not repairing), 1st, that he put the messuage, &c. in repair, and kept them so; 2d, that plaintiff wilfully pulled down a part of the buildings, and that defendant had always kept the residue in repair. Replication on the 3d plea, taking issue on the pulling down.
80. Plea, that plaintiff covenanted to put premises in repair from the first, and provide timber, &c. that he did not, by reason whereof premises were not continued in repair.
80. Plea to breach of covenant for not repairing, that plaintiff levied a distress in the premises for rent, the charges of which he ought to have borne, that defendant paid them in satisfaction of the default of repairing, in consideration whereof plaintiff had discharged defendant from all damages for the want of such repair.

Plea, protesting that at the time of the demise, &c. the premises were not sufficiently repaired; that he did repair as need required; and traverses that he left them unrepaired; and issue on the traverse, *Mo. Intr. 140.*

Plea that premises were sufficiently repaired; and issue thereupon generally, *Mo. Intr.*

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- Plea** that he had assigned the house, and that it was afterwards burnt, and that it was well repaired before the exhibiting, but does not say by whom, and for that it was bad, 2. *San.* 418. 3. *Infr. Cl.* 396. Demurrer, 2. *Mo. Int.* 208.
- Plea** that he repaired the sea-walls so soon as he could, but did not show the time of the repair, nor answer to the recompence. Demurrer, *Wi. Ent.* 147.
- Plea** that he upheld the premises in repair during the term, and they were so surrendered at the end of the term, 3. *Infr. Cl.* 402.
- Plea** that he well and sufficiently repaired against the wind and rain, and made it tenantable at his own expence during the year; and issue, 3. *Infr. Cl.* 403.
- Plea** that defendant, within the term assigned to R. of whom plaintiff accepted rent, that the chimnies were taken down by plaintiff's order, and a leaden gutter pipe was pulled down to build a shed, defendant intending to make a new gutter, but before he could do it plaintiff entered and expelled defendant, and R. his assignee, *Vid.* 129.
- Plea** that the sea-walls were broken down by the accident of the force of the tempestuous weather, which defendant could not repair sooner at his own expence. Demurrer, *Wi. Ent.* 144.
- Plea** to repairing the chancel, that they did not demise to the residue. Demurrer, 1. *San.* 108.
- Plea** that the house at the end of the term was sufficiently repaired; and traverses that it was unroofed for want of covering in, that walls were repaired; and traverses that they were broken, and so of the rest, *Vid.* 122. The like and issue on each breach, 3. *Infr. Cl.* 400.
- Plea** that the barn before the end of the term was pulled down by plaintiff's order, and plaintiff disposed of the materials, and that the rest of the premises were kept in good repair during the term, and so left at the end, *Br. R.* 143.
- Plea** that the houses were not unroofed for want of covering in, and issue; and that glass windows were not broken for want of glazing, and issue; and so of the rest, *Bro. R.* 157.
- Plea** that he sufficiently repaired all the houses during the term, and so left them at the end, that he did not permit the pavement of the arca to be in decay for want of repair at the end of the term, that he did not permit the tiling, waifcoting, windows, and walls, to be broken down, in decay, and out of repair, and leave them so at the end; and issue on all the breaches. Demurrer to first plea, issue to the residue, 2. *Vent.* 124. Judgment to plaintiff on demurrer, *Ibid.* 128.
- Plea** that defendant, within the term assigned to M. of whom plaintiff accepted rent, *Wi. Ent.* 143. 2. *San.* 298. 3. *Infr. Cl.* 412. Demurrer, *Vid.* 129. 2. *Vent.* 232. Demurrer.
- Plea** that he assigned, and no rent in arrear, 3. *Lev. Rep.* 231. Demurrer, because he does not produce notice of the assignment.
- Plea** that lessee (before the grant of the reversion by the lessor) surrendered the term to lessor, which lessor accepted. Replication that defendant did not surrender, 1. *San.* 235. Verdict for plaintiff.
- Plea** that testator had nothing in the tenements. Demurrer, 2. *Vent.* 98. 3. *Infr. Cl.* 416.
- Plea** that the indenture became forfeited, for that the rent was in arrear, for which cause plaintiff re-entered. Replication that the former estate (after which plaintiff ought to enjoy) was in *esse* at the time of suing out the bill, Defendant demurs, *Vid.* 143.
- Covenant to make quickset hedge**; plea that defendant planted as much as was necessary, 3. *Infr. Cl.* 386.
- Plea**, performance of all covenants. Replication that he could not enjoy the mill with all profits and advantages, and shows in what particulars; and takes issue on stopping up the watercourse, 3. *Infr. Cl.* 421.

Plea

Plea as to part, *cognovit actionem* as to the residue, that before any rent was due he assigned the term to another. Demurrer and judgment for that part, 2. *Vent.* 23. That defendant performed all covenants till such a feast, and then P. having a better title, entered into the tenement, and expelled defendant, *Br. R.* 158. 3. *Instr.* Cl. 406.

By an *executrix* of lessee for years against the *executors* of an *executrix*, who was the assignee of all the assignees, for want of several repairs in rooms, &c. *Mo. Intr.* 121.

By lessee against lessor, for not keeping the house in repair, 2. *Mo. Intr.* 204.

Plea to declaration for rent payable on the demise, and repairs done, that defendant within the term assigned to W. of whom plaintiff accepted the rent, *Herne* 276.

Plea that he did repair according to covenant, *Ra. Entr.* 136. *Vet. Entr.* 36. *Herne* 271.

Plea to declaration for permitting houses to be uncovered, that they are and were well repaired; and traverse that they were uncovered for want of straw, and of the other breaches, *Her.* 288.

Pleas by Lessor (16). See Pleas to Declarations on Articles of Agreement, and on Lease.

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82. Plea to breach of covenant, that in consideration of a surrender of a term before its expiration, plaintiff released the damages arising from the breach of covenant.

84. Plea to breach of covenant by entry and expulsion by a stranger, *non est factum*; 2d, that before, &c. defendant surrendered his lease, which plaintiff accepted.

84. Plea to an action of covenant for not granting lease, and not fitting up house; 1st, that defendant was ready to execute a lease had it been tendered to him; 2d, that he did fit up the house.

85. Plea to breach of covenant by an entry and expulsion by a stranger, *non est factum*; 2d, that before, &c. defendant surrendered his lease, which plaintiff accepted; 3d plea, that plaintiff entered into another lease of the said premises by indenture, in which defendant only covenanted for him and those claiming under him, and not against the acts of a stranger.

Plea that the statutes 13th and 18th of Elizabeth, to avoid the covenants to make a lease to plaintiff, and plaintiff demurs judgment for plaintiff on the statute 14. *Eliz. Wt. Entr.* 149.

Plea, protesting, &c. that defendant did not enter into the manor, &c. for plea that J. and M. did not expel defendant, *Ro. Entr.* 174.

Plea by defendant, confessing the receipt of eight hundred pounds, but that before the receipt thereof he demanded towards the repairs and other necessary charges eight hundred and ten pounds, for which he retained the said eight hundred pounds towards satisfaction. Demurrer and judgment for plaintiff, 1. *Sand.* 45. 3. *Instr.* Cl. 414.

Plea that plaintiff quietly and peaceably had and enjoyed the wood, timber, and trees, without interruption, according to the covenant, 3. *Instr.* Cl. 420.

Plea

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Plea that defendant demised to plaintiff one other messuage for that term, as in the other indenture, in full satisfaction of all damages sustained by plaintiff's eviction by the bishop. Replication that he did not demise the said messuages in full satisfaction, &c. and tenders an issue on that to defendant. Demurrer, *Br. R.* 149. 3. *Instr. Cl.* 393.

Covenant to leave lands demised to plaintiff at the end of the term; bar, that before the demise plaintiff devised J. of the lands which he demised to defendant. J. re-entered, and enfeoffed H. from whom it descended to T. who was seised at the end of the term, so that defendant could not leave, &c. *Br. R.* 168. 3. *Br.* 33.

Plea that he permitted plaintiff to make a drain according to covenant, but he refused it, 3. *Instr. Cl.* 404. 2. *Vent.* 274. Demurrer.

Plea, protesting that H. S. had no right, for plea he did not eject, 3. *Instr. Cl.* 403.

Plea, protesting that defendant did not enter into the manor, that J. and M. did not expel defendant, *Ro. Entr.* 174.

Plea *non demisit* to part, and demurrer to other part, 1. *Sac.* 4. 2. *Mo. Intr.* 209.

That plaintiff, lessee, surrendered to defendant, lessor, the term of which plaintiff expelled him, &c. Replication, did not surrender, *Ra. Entr.* 136.

That he did not hinder plaintiff from taking possession, *Co. Entr.* 65.

That he did not demise the houses in a ruinous state, *Ra. Entr.* 162.

Pleas to Declaration on Mortgage (17).

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81. Plea that the mortgage contained a covenant, that after default in payment of the money at the day, mortgagee might enter, and the default being made, mortgagee did enter, and thereby released defendant. Replication, taking issue on the entry by the plaintiff.

Pleas to Declarations on Indentures, Articles of Agreement, &c. (18).

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76. Plea of *non infregit* in covenant.

76. Plea as to eight pounds, parcel tender, and to the residue a set-off.

89. *Non infregit* pleaded in covenant.

90. *Non infregit* in covenant.

92. Plea of Insolvent Debtor's Act to action of covenant.

78. Plea to action of covenant on articles of agreement; 1st, *non est factum*; 2d, that he paid to H. C. by plaintiff's order, for plaintiff's use, all the money due for rent, &c.

88. Plea of *non damnificatus* to breach of covenant to save harmless.

- Plea, performance of the condition. Replication that plaintiff required him to levy a fine, and he refused, 3. *Instr. Cl.* 419. Rejoinder that he did not offer the money for the costs; and issue.
- On a bargain and sale brought by the heir; defendant says, that the first devisee for life being heir, released to him with warranty, 3. *Instr. Cl.* 409.
- Plea after *oyer* of the indenture, that neither plaintiff nor A. in the indenture mentioned, were in possession of the premises, and that the indenture was made by the maintenance of plaintiff by the intestate and A. for the recovery of the premises, and therefore void, *Br. R.* 143. (*Per Saunders*).
- Plea that there are not any covenants on the part of the defendant to be performed, *Br. R.* 153. Demurrer.
- Plea that plaintiff did not require defendant to make him a deed of release of the lands, *Br. R.* 163.
- On a covenant for further assurance upon request. Plea, did not request, 3. *Instr. Cl.* 418.
- Plea, that immediately upon the execution of the indenture, he put plaintiff into possession of the premises. Replication, taking issue, *Ro. Entr.* 174.
- Plea that testator *nil habuit in tenementis*. Demurrer, 2. *Vent.* 98. 3. *Instr. Cl.* 416.
- Plea that defendants appointed one T. to measure a park, which he measured before the day fixed, and upon the admeasurement thereof the purchase money was found to amount to two thousand five hundred and thirty pounds. Demurrer, *Wi. Entr.* 129. *Bro. Va. Me.* 126.
- Plea *non infregit conventionem*, *Ro. Entr.* 170. *Br. R.* 147.
- That defendant was seised in fee, and had full power to sell; issue taken, but defendant demurs, *Wi. Entr.* 135.
- Plea that neither defendant or any of his tenants have broken the covenants mentioned, *Bro. Vad.* 142.
- Plea *non infragit conventionem modo et forma*, and issue, *Ro. Entr.* 170. 3. *Instr. Cl.* 385.
- Plea performance generally of all covenants, 3. *Instr. Cl.* 385. 398. Demurrer, *Bro. Met.* 130.
- Plea, *non est factum*, 3. *Instr. Cl.* 387. *Ro. Entr.* 164.
- Plea, a release, and the tenor follows in *hæc verba*, 3. *Instr. Cl.* 387. Demurrer, *Ro. Entr.* 166.
- Plea, surrender and issue thereon, 3. *Instr. Cl.* 393. 2. *Mo. Entr.* 207.
- Plea, protesting that he kept his covenant of warranty; protesting also, that H. had no legal title, &c. for plea that H. did not evict, 2. *Mod. Intr.* 209.
- Plea after *oyer* of the indenture, that by plaintiff's order he placed the money for the wine in the hands of A. to plaintiff's use, where it remains. Demurrer, 3. *Instr. Cl.* 415.
- Plea that he was prepared to make a release of the lands, and levy a fine, but no request was ever made for that purpose, *Co. Entr.* 65.
- That defendant did not make plaintiff a good title in the lands in fee, although plaintiff was prepared to pay the costs. Demurrer, *Co. Entr.* 132.
- That plaintiff did not request him to make a release of lands, 1. *Br. R.* 72.
- Plea that plaintiff put cattle into the pasture according to the indenture, and that defendant drove them out. Replication that defendant was removed from his office of keeper, and that the demise made to plaintiff ceased; and that defendant, as the servant, drove them out. Rejoinder that he was not removed from his office, *Co. Entr.* 134.
- Plea that the lands were not charged with prior incumbrances, *Co. Entr.* 65.
- Plea that the father of tenant for life released with warranty, which descended to the son; and that the defendant, at the time of the indenture made, had a good estate in the lands, Demurrer, *Co. Entr.* 113.

Covenant to pay plaintiff annually four pounds, until he should be better provided for by P. Plea that P. freely gave and granted to plaintiff the rectory for life. Replication that P. demised to plaintiff the rectory under an agreement to pay so much, and traverses the free gift, 3. *Br.* 30.

Plea; release; demurrer, *Co. Entr.* 116.

Plea, accord, and an agreement. Replication, no agreement, *Co. Entr.* 117.

DEBT.

ON SIMPLE CONTRACTS.

In C. B. Trinity Term, 28. Geo. III.

MIDDLESEX, to wit. John Davis, late of Westminster, in the county of Middlesex, &c. and Ann his wife, late Ann Revell, widow, executrix of the last will and testament of Samuel Revell, deceased, were attached by his majesty's writ of privilege issuing out of the court here, to answer unto William Lyng, gent. one of the attornies of his majesty's court of the bench here, according to the liberties and privileges of the said court for such attornies and other ministers of the said court, from time immemorial and approved, in a plea that they render unto the said William thirty-three pounds four shillings and fourpence of lawful money of Great Britain, which they unjustly detain from him, &c. and thereupon the said William, in his own proper person, complains, that whereas the said Samuel Revell, in his lifetime, to wit, on the day of , in the year of Our Lord 1788, at Westminster, in the county of Middlesex, became and was indebted to the said William in a large sum of money, to be paid upon request, to wit, in the sum of eight pounds six shillings and a penny of lawful money of Great Britain, for the work and labour, care, diligence, skill, and attendance of the said William, by him the said William, as the attorney of the said Samuel Revell, and upon his retainer before that time done, performed, and bestowed for the said S. R. in and about the prosecuting and defending divers suits at law in the said court here, and in other his majesty's courts of record at Westminster, and at his special instance and request, and for money by the said William before that time laid out, expended, and paid in that particular, and at the like special instance and request of the said S. R.; whereby, and by reason whereof, and of the said sum of money being still due and unpaid to the said William, an action hath accrued to the said William to demand and have of and from the said John and Ann (as the said Ann is such executrix as aforesaid), the said sum of eight pounds six shillings and a penny, parcel of the said thirty-three pounds four shillings and fourpence above demanded: And whereas the said William, as the attorney of the said S. R. heretofore in the lifetime of the said S. R. to wit, on the day and year aforesaid, at Westminster aforesaid, in the county aforesaid, had,

Declaration, in
debt for an at-
torney's bill.

1st Count, on
the contract and
consideration,
&c. being busi-
ness done as at-
tornies, in pro-
secuting suits,
&c.

2d Count, upon
the quantum me-
rit.

at the like special retainer and request of the said S. R. and for him the said S. R. done, performed, and bestowed other his work and labour, care, diligence, skill, and attendance in and about the prosecuting and defending divers other suits at law in the said court here, and other his majesty's courts of record at Westminster, for so much money as he the said William reasonably deserved to have for the same, a certain other large sum of money, to wit, the further sum of eight pounds six shillings and a penny of like lawful money, to wit, at Westminster aforesaid, in the county aforesaid; whereof the said S. R. afterwards, in his lifetime, to wit, on the day and year aforesaid, there had notice, whereby the said Samuel Revell became and was then and there indebted to the said William in the said last-mentioned sum of money, to be paid on request; and thereby and by reason thereof, and of the said last-mentioned sum of money being still due and unpaid, an action hath accrued to the said William to demand and have of and from the said John and Ann (as the said Ann is such executrix as aforesaid), the said last-mentioned sum of eight pounds six shillings and a penny, other parcel of the said thirty-three pounds four shillings and fourpence above demanded: And whereas the said S. R. afterwards, in his lifetime, to wit, on the day and year aforesaid, at Westminster aforesaid, in the said county aforesaid, became and was indebted to the said William in another large sum of money, to be paid upon request, to wit, in the sum of other eight pounds six shillings and a penny of like lawful money, for money by the said William before that time laid out, expended, and paid for the said S. R. and at his like special instance and request; whereby and by reason whereof, and of the said last-mentioned sum of money being still due and unpaid, an action hath accrued to the said William, to demand and have of and from the said John and Ann (as the said Ann is such executrix as aforesaid) the said last mentioned sum of eight pounds six shillings and a penny, other parcel of the said thirty-three pounds four shillings and fourpence above demanded: And whereas the said S. R. afterwards, in his lifetime, to wit, on the day and year aforesaid, at Westminster aforesaid, in the county aforesaid, became and was indebted to the said William in another large sum of money, to be paid upon request, to wit, in the sum of other eight pounds six shillings and a penny of like lawful money, upon an account stated between the said Samuel Revell and the said William, of and concerning divers other sums of money before that time due and owing from the said S. R. to the said W. and then being in arrear and unpaid; whereby and by reason whercof, and of the said last-mentioned sum of money being still due and unpaid, an action hath accrued to the said William to demand and have of and from the said John and Ann (as the said Ann is such executrix as aforesaid) the said last-mentioned sum of eight pounds six shillings and a penny, residue of the said thirty-three pounds four shillings and fourpence above demanded: Yet the said John and Ann, although often requested, &c. have not, nor hath either of them as yet paid the said thirty-three pounds four shillings and

four-

3d Count,
money laid out,
&c.

4th Count, ac-
count stated.

fourpence above demanded, or any part thereof, to the said William; but they to pay the same have, and each of them hath, hitherto wholly refused, and still do respectively refuse, to the damage of the said William of ten pounds; and therefore he brings his suit, &c. Pledges, &c.

I am of opinion, that if the bills which are the subject of the present action have been properly delivered a month, debt may be maintained upon them before taxation. For the same reason I am aware of no objection of the defendants being held to bail on the demand against them. If the defendants please, however, they may yet tax them; but if they neglect to do it before the trial I apprehend they will come too late then to dispute the amount, and that will be

taken *pro confesso*, though the general prevailing opinion may be, that in debt you shall be held to the proof of the particular amount of the sum demanded; yet I think it is not so in all cases (and particularly not so here, as I have declared); yet, as that opinion is generally received, I have for that reason inserted the exact amount of the bills delivered to obviate any objection on that account.

T. BARROW.

So held by Lord
Mansfield at *ass.
prius*.

MIDDLESEX, to wit. Charles Bower and Benjamin Bower, complain of James Goddard, being, &c. in a plea that he render to the said plaintiffs twenty-four pounds three shillings of lawful, &c. which he owes to, and unjustly detains from them, &c.; for that whereas the said defendant heretofore, to wit, on the day of , in the year of Our Lord , at, &c. borrowed of the said plaintiffs, a large sum of money, to wit, the sum of eight pounds one shilling of lawful, &c. to be paid to the said plaintiffs when he should be thereto requested, whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of eight pounds one shilling, parcel of the said sum of twenty four pounds three shillings above demanded. And whereas the said defendant afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, had and received to the use of the said plaintiffs a large sum of money, to wit, the further sum of eight pounds one shilling, to be paid to them the said plaintiffs when he the said defendant should be thereto afterwards requested; whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the said last-mentioned sum of eight pounds one shilling, other parcel of the said twenty-four pounds three shillings above demanded: And whereas the said defendant afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, accounted with the said plaintiff of and concerning divers other sums of money before that time, and then due and owing from him the said defendant to them the said plaintiffs, and upon that accounting he the said defendant was then and there found in arrear to the said plaintiffs in another large sum of money, to wit, the further sum of eight pounds one shilling of like lawful money, to be paid to the said plaintiffs when he the said defendant should be thereto afterwards requested; whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said last-mentioned sum of eight pounds one shilling, resi-

Declaration *res.*
debt, on a *mutu-*
tuatus, for money
had and receiv-
ed, on an ac-
count stated,
&c.

2d, Money had
and received.

3d, Account
stated.

due of the said twenty-four pounds three shillings above demanded : Yet the said defendant, although often requested, hath not as yet paid the said sum of twenty-four pounds three shillings hereinbefore mentioned and above demanded, or any part thereof to the said plaintiffs, or either of them ; but he to pay the same, or any part thereof to the said plaintiffs, or to either of them, hath hitherto wholly refused and still doth refuse, to the damage of them the said plaintiffs of twenty pounds ; therefore they bring their suit, &c. Pledges, &c.

V. LAWES.

Debt, upon a promissory note, upon a mutual, and upon an informal computass; payee v. maker.

(1) "Middlesex, to wit, Matthew Richards, Charles Jones, and Ann Jones, executors and executrix of the last will and testament of Richard Jones, esquire, deceased, complain of John Evans, gentleman," (2) "them" (3) "executors" (4) "them" (5) "defendant, in the lifetime of the said R. J. to wit," (6) "Westminster, in the county of Middlesex," (7) "at Swansea, in the county of Glamorgan, the day and year last aforesaid, and thereby" (8) "R. J." (9) "R. Jones, esq." (10) "one month after the date thereof, fifteen pounds fifteen shillings, for value received, and then and there delivered the said note to the said R. J. ; whereby and by reason of which said several premises, and by force of the statute in such case made and provided, the said John became liable to pay to the said R. J. the said sum of money in the said note specified, according to the tenor and effect of the said note ; and the said plaintiff avers, that he said John did not, any time in the lifetime of the said R. J. pay unto the said R. J. the said sum of money in the said note specified, or any part thereof, but the same remained and was wholly due and owing from the said John to him the said R. J. at the time of his death, to wit, at Westminster aforesaid, in the said county of Middlesex," (11) "plaintiffs, executors, and executrices aforesaid," (12) "defendant," (13) "fifteen pounds fifteen shillings."

(1) By omitting the words in *italic*, and inserting the alterations in the margin, this declaration will serve for a precedent in the case of payee v. maker.

(1) LONDON, ss. Thomas Freckleton complains of C. Muller, being in the custody of the marshal of the Marshalsea of our lord the now king, before the king himself, in a plea that he render (2) to him the said (3) Thomas Freckleton one hundred and twenty-six pounds of lawful money of Great Britain, which he owes to and unjustly detains from (4) him : for that whereas the said (5) C. on the thirty-first day of July, in the year of Our Lord 1788, at (6) London, in the parish of St Mary-le-bow, in the ward of Cheap, made and signed his certain note in writing, commonly called a promissory note, bearing date (7) the same day and year aforesaid, and then and there delivered the said note to the said Thomas, by which said note the said C. seven months after date, promised to pay to the said (8) Thomas, by the name and addition of (9) Mr. Thomas Freckleton, or order, (10) thirty-one pounds ten shillings, value received : And the said Thomas further saith, that the said C. did not when the said sum of thirty-one pounds ten shillings in the said note mentioned became due and payable, according to the tenor and effect of the said note, pay, nor hath he at any time since paid the same, or any part thereof, to the said Thomas, and that the said Thomas hath not indorsed the said note, or made any order of and concerning the payment of the same to any person or persons whomsoever, to wit, at London aforesaid, in the parish and ward aforesaid ; by reason whereof an action hath accrued to the said (11) Thomas to demand and have of and from the said (12) C. the said sum of (13) thirty-one pounds ten shillings in the said note mentioned, parcel of the said sum of one hundred and twenty-six pounds above demanded : And whereas the said C. afterwards, to wit, on the first day of April, in the year of Our Lord 1789, at London aforesaid, in the parish and ward aforesaid, borrowed of the said Thomas, who then and there, at the special instance and request

of the said C. lent to the said C. another large sum of money, to wit, the sum of thirty-one pounds ten shillings of like lawful money, whereby the said C. then and there became indebted to the said Thomas in the said last-mentioned sum of money, to be paid to the said Thomas when he the said C. should be thereto afterwards required; whereby an action hath accrued to the said Thomas to demand and have of and from the said C. the said last-mentioned sum of money, other parcel of the said sum of one hundred and twenty-six pounds above demanded: And whereas the said C. afterwards, to wit, on the same day and year last aforesaid, ^{3d Count, the} at London aforesaid, in the parish and ward aforesaid, ^{ney had and re-} received to the use of the said Thomas a certain other large sum of money, to wit, the sum of thirty-one pounds ten shillings of like lawful money, and thereby then and there became indebted to the said Thomas in the said last-mentioned sum of money, to be paid to the said Thomas when he the said C. should be thereto afterwards requested; whereby an action hath accrued to the said Thomas to demand and have of and from the said C. the said last-mentioned sum of money, or parcel of the said one hundred and twenty-six pounds above mentioned: And whereas the said C. afterwards, ^{4th Count, the} to wit, on the day and year last aforesaid, at London aforesaid, ^{count stated,} in the parish and ward aforesaid, accounted with the said Thomas of and concerning divers other sums of money before that time due and owing from the said Charles to the said Thomas, and upon the said accounting, he the said C. was then and there found in arrear and indebted to the said Thomas in another large sum of money, to wit, in other thirty-one pounds ten shillings of like lawful money to be paid to the said Thomas when he the said Charles should be thereto afterwards requested; whereby an action hath accrued to the said Thomas to demand and have of and from the said C. the said last-mentioned sum of eighty-one pounds ten shillings, residue of the said sum of one hundred and twenty-six pounds above demanded: Yet the said C. although often requested, hath not paid to the said Thomas the said sum of one hundred and twenty-six pounds above demanded, or any part thereof; but to pay the same to the said Thomas hath hitherto wholly refused, and still refuses, to the damage of the said Thomas of forty pounds; and therefore he brings his suit, &c.

(a) FOR that whereas the said Evan, heretofore, to wit, on the first day of August 1791, at Machyulleth, in the county of Mont-^{Declaration in} gomery, and within the jurisdiction of this court, became and was ^{debt, for depas-} indebted to the said Joseph in a large sum of money, to be paid ^{torage of cattle;} upon request, to wit, in the sum of two pounds ten shillings of law-^{quantum meruit,} ful money of Great Britain, for the pasturage and feeding of divers ^{goods, &c. sold;} cattle, horses, mares, and geldings, by the said Joseph before that time, ^{quantum meruit,} and ^{money had and} at the special instance and request of the said Evan, there fed and de-^{received, and} pastured for the said Evan for a long time, to wit, for the space of ^{account stated,} five years then elapsed; whereby and by reason whereof, and of

(*) See Beginnings, &c. of Declarations, Practical Forms.

DEBT.—ON SIMPLE CONTRACTS.

the said sum of money being wholly due and unpaid, an action hath accrued to the said J. to demand and have of and from the said Evan the said sum of two pounds ten shillings, parcel of the said pounds above demanded. And whereas the said Joseph afterwards, to wit, on the day and year aforesaid, at Machyulleth aforesaid, in the county and jurisdiction aforesaid, at the like special instance and request of the said Evan, and for the said Evan there fed and depastured divers other cattle, horses, mares, and geldings for a long time, to wit, for the space of five years then elapsed, for so much money as he the said Joseph reasonably deserved to have for the same, to be paid to him upon request; and the said Joseph avers that he there reasonably deserved to have for the same another large sum of money, to wit, the sum of two pounds ten shillings of like lawful money; whereof the said Evan afterwards, to wit, on the day and year aforesaid, at M. aforesaid, in the county and jurisdiction aforesaid, had notice; whereby the said Evan then and there became and was indebted to the said Joseph in the said last-mentioned sum of money, to be paid to the said Joseph when he the said Evan should be thereunto afterwards requested; and thereby and by reason thereof, and of the said last-mentioned sum of money being still due and unpaid, an action hath accrued to the said Joseph to demand and have of and from the said Evan the said last-mentioned sum of two pounds ten shillings, further parcel of the said pounds above demanded; And whereas the said Evan afterwards, to wit, on the day and year aforesaid, at M. aforesaid, in the county and jurisdiction aforesaid, became and was indebted to the said Joseph in another large sum of money, to be paid upon request, to wit, in the further sum of two pounds ten shillings of like lawful money, for divers goods, wares, and merchandizes by the said Joseph before that time there sold and delivered to the said Evan, at his like special instance and request; whereby and by reason whereof, and of the said last-mentioned sum of money being still due and unpaid, an action hath accrued to the said Joseph to demand and have of and from the said Evan the said last-mentioned sum of two pounds ten shillings, other parcel of the said sum of pounds above demanded: And whereas the said Joseph afterwards, to wit, on the day and year aforesaid, at M. aforesaid, in the county and jurisdiction aforesaid, at the like special instance and request of the said Evan, sold and delivered to the said Evan, who then and there bought of the said Joseph certain other goods, wares, and merchandizes for so much money as he the said Joseph there reasonably deserved to have for the same, to be paid to the said Joseph when he the said Evan should be thereto afterwards requested; and the said Joseph avers, that he reasonably deserved to have of the said Evan for the said last-mentioned goods, wares, and merchandizes, at the time of the sale and delivery thereof, a certain other sum of money, to wit, the sum of two pounds ten shillings of like lawful money; whereof the said Evan afterwards, to wit, on the day and year aforesaid, at M. aforesaid, in the county and jurisdiction aforesaid, had notice;

For goods sold
and delivered.

Quantum meruit.

notice; whereby the said Evan then and there became and was indebted to the said Joseph in the said last-mentioned sum of money, to be paid to the said Joseph when he the said Evan should be thereto afterwards requested; and thereby and by reason thereof, and of the said last-mentioned sum of money being still due and unpaid, an action hath accrued to the said Joseph to demand and have of and from the said Evan the said last-mentioned sum of two pounds ten shillings, further parcel of the said sum of two pounds ten shillings above demanded: And whereas the said Evan afterwards, Money had and to wit, on the day and year aforesaid, at M. aforesaid, in the county and jurisdiction aforesaid, became and was indebted to the said Joseph in another large sum of money, to be paid upon request, to wit, in the further sum of two pounds ten shillings of like lawful money, for money by the said Evan before that time had and received to the use of the said Joseph; whereby and by reason thereof, and of the said last-mentioned sum of money being still due and unpaid, an action hath accrued to the said Joseph to demand and have of and from the said Evan the said last-mentioned sum of money, other parcel of the said sum of pounds above demanded: And whereas the said Evan afterwards, to wit, on the day and year aforesaid, at M. aforesaid, in the county and jurisdiction aforesaid, became and was indebted to the said Joseph in a certain other large sum of money, to be paid upon request, to wit, in the further sum of two pounds ten shillings of like lawful money, upon and for the balance of accounts stated between them the said J. and the said Evan, of and concerning divers other sums of money before that time due and owing from the said Evan to the said Joseph, and then being in arrear and unpaid; whereby and by reason whereof, and of the said last-mentioned sum of money remaining due and unpaid, an action hath accrued to the said Joseph to demand and have of and from the said Evan the said last-mentioned sum of two pounds ten shillings, residue of the said pounds above demanded: Yet the said Evan, although often requested, hath not paid the said sum of pounds above demanded, or any part thereof, to the said Joseph, but he to do the like hath hitherto wholly refused and still refuses so to do, to the damage of the said Joseph of pounds; and therefore he brings his suit, &c. Pledges, &c.

Account stated.

In the Exchequer, Trinity Term, 30. Geo. III.

SUFFOLK, to wit. William Wollaston, esquire, debtor of our present sovereign lord the king, comes before the barons of this exchequer on the twenty-third day of June in the same term, by Abel Jenkins his attorney, and complains by bill against Thomas Craski Fiske, gentleman, present here in court the same day, of a plea that he tender to him the said William seven pounds four shillings of lawful money of Great Britain, which he owes to and unjustly detains from him the said William: for that (1) Declaration in debt, for a quit rent by the lord of the manor against the owner of a freehold estate within the manor, and opinion that a personal action cannot be maintained for it. (1) "And"

whereas

- (4) "also" whereas (2) the said William, on the (3) first day of September, in the (4) year of Our Lord 1777, was, and from thence hitherto hath been, and still is seised of and in the (5) manor of Stowmarket, otherwise Abbot's-Hall, in the said county of Suffolk, with the appurtenances in his demesne as of fee; and the said William being so seised thereof as aforesaid, he the said Thomas Crafski, on the said first day of September, in the year (6) aforesaid, was, and from thence hitherto hath been, and still is seised in his demesne as of fee of and in a certain *shop* (7) and tenement, with the appurtenances, situate, lying, and being within, and parcel of the said manor of Stowmarket, otherwise Abbot's-Hall, in the said county of Suffolk, and which said *shop and* (8) tenement, with the appurtenances, parcel, &c. he the said Thomas Crafski, during all the time aforesaid, held of the said William as of that his said manor by fealty, and the yearly rent of *one* (9) shilling, payable yearly on the feast of St. Michael the Archangel, according to the old style and computation of time heretofore used within this realm in every year, and also by the service of doing suit at the court of the said manor holden and to be holden from three weeks to three weeks within the said manor, of which service the said William, during all the time aforesaid, was seised by the hands of the said J. C. as by the hands of his very tenant, to wit, of the fealty and suit of court (10) aforesaid, as of fee and right of the said (11) yearly rent in his demesne as of fee, and the said J. C. being so seised of the said *shop* (12) and tenement, with the appurtenances, parcel, &c. and so holding the same as aforesaid; and the said William being so seised of the said manor, with the appurtenances, whereof, &c. as aforesaid, *twelve* (13) shillings of the aforesaid (14) yearly rent, for twelve years of the time aforesaid, ended on the feast of St. Michael the Archangel, in the said year of Our Lord 1789, according to the said old style on that day in the year last aforesaid, at Stowmarket, in the said county of Suffolk (15), became due and owing from the said J. C. to the said William, and still remain unpaid, whereby an action hath accrued to the said William, to demand and have of and from the said J. C. the said *twelve* (16) shillings (17), parcel of the said seven pounds four shillings above demanded. (2d Count like the first, except what is in italic and inserting alterations in the margin; 3d Count, for twelve year's rent of a *shop and tenement*, at three shillings and four pence *per annum*; 4th Count, a tenement at eight shillings; 5th Count, a *shop and tenement* at four shillings.)

Drawn by MR. DODSON.

2d Bro. Ch. Caf. 338.
As to such of the quit rents demanded by this declaration, as there seems to be no foundation in fact for claiming, I have pleaded the general issue, and as to the others, have demurred from an opinion that the plaintiff's only remedies are a real action or distress, and that a personal action cannot be maintained for

them. I am aware of the case of the Duke of Leeds v. the Corporation of Radnor, which came before the present chief justice of the King's Bench when matter of the rolls, and in which he refused to decree the payment of a fee farm rent in equity, on the ground that such an action as the present might be

main-
tain.

maintained at law. I am also aware that Mr. Justice Blackstone, though he says no action of debt lay by the common law for a freehold rent reserved on a lease for life, &c. during the continuance of the freehold out of which it issued, and states as a reason, that the law would not suffer a real injury to be redressed by an action that was merely personal, yet goes on to add, that by the statutes of the 8th Ann. and 5. Geo. 3. actions of debt may now be brought at any time to recover such freehold rents. See 3. Bl. Com. c. 15.

These authorities, formidable as they at first appear, are in my opinion easily answered, with regard to Mr. Justice Blackstone, if he is right in his first proposition, that the action would not lie at common law (which I take to be correct), he becomes an authority in my favour; for on looking into the statutes he refers to as giving the action, it appears evident that he is mistaken as to the extent of their operation: the first of them applies to leases for life, the other to ecclesiastical cities only, and I do not find any statute which extends the remedy by action to rents of inheritance,

like those which are the object of this suit, the 4th Geo. 2. c. 28. being confined to the remedy by distress.

As to the language of Lord Kenyon in the case before him at the Rolls, it seems to me abundantly outweighed by the variety of cases in which a court of equity has decreed the payment of quit rents, from the impracticability of ascertaining the premises, liable so as to take a proper distress on them. I am also informed that there was a solemn decision in the court of King's Bench about six years ago, in a case from the home circuit (which is not reported, and the name of which I have not been able to learn), that an action cannot be maintained for a rent of this description, and I remember a recent case before Lord Loughborough, in which he ruled that a similar action would not lie, and directed a nonsuit.

It is right in the opinion I have found, the defendant will of course defeat the present proceeding, and a future distress will be effectually precluded by a previous payment or tender of what is actually in arrear.

SAMUEL MARRYATT.

Hyde v. Woodgate.

Maldstone summer assizes, 1789.

STAFFORDSHIRE, to wit. The right honourable George Venables, lord Vernon, and Mary Anson, widow, executor and executrix of the last will and testament of George Anson, late of deceased, complain of William Jennings being in the custody of the marshal of the marshal's office of our lord the now king, before the king himself, in a plea that he render to the said G. V. lord V. and M. A. executors and executrix as aforesaid, the sum of pounds of lawful money of Great Britain, which he unjustly detains from them, &c.: for that whereas heretofore, in the lifetime of the said G. A. and before and at the time of the giving of the notice to quit by the said G. A. to the said W. hereafter mentioned, the said W. had been, and was tenant of the said G. A. for a term of years, that is to say, from year to year, of a certain tenement consisting of [here describe the premises generally], of the said G. A. then-torefore demised by the said G. A. to the said W. determinable at the will of the said G. or the said W. at Lady-day in any year, at and under a certain yearly rent, to wit, the yearly rent of one hundred and five pounds of lawful money of Great Britain, therefore payable by the said William to the said G. A. to wit, at the parish aforesaid, in the county aforesaid; and the said William being such tenant to the said G. A. of the said tenement as aforesaid, with the appurtenances, by virtue of the said demise, and the reversion thereof belonging to the said G. A. to wit, at the parish aforesaid, in the county aforesaid, he the said

Declaration in debt on stat. 4. Geo. II. c. 26. for double rent, at the suit of executors of lessee for against lessee, for not quitting according to notice given by testator. (a)

(a) See Debt on Statutes, post.

G. A.

G. A. in his lifetime heretofore, and during the continuance of the said demise, to wit, on the day of , in the year of Our Lord 1788, at the parish aforesaid, in the county aforesaid, made a demand, and gave notice in writing to the said William for delivering possession of the said demised tenement, with the appurtenances, to him the said G. A. at Lady-day then next ensuing, and which was in the year of Our Lord 1789, and thereby the said demise and term, on the day and year last aforesaid, at the parish aforesaid, in the county aforesaid, ended and determined; and the said G. V. lord V. and M. A. executors and executrix as aforesaid, further say, that the said G. A. deceased, in his lifetime, to wit, on the twenty-sixth day of March, in the year last aforesaid, at the parish aforesaid, in the county aforesaid, demanded of the said William to deliver up the possession of the said demised premises, with the appurtenances, according to the said notice; yet the said William, not regarding the premises, nor the statute in that case made and provided, did not, nor would then and there deliver up the possession of the said demised tenement, with the appurtenances, to the said G. A. deceased, in his lifetime, but then and there refused so to do, and wilfully held over and continued in possession thereof, and kept the said G. A. in his lifetime so being landlord of the said premises so as aforesaid out of the possession thereof, after the said Lady-day in the said year of Our Lord 1789, for a long time, to wit, from thence until and upon the said twenty-seventh day of October next, and immediately ensuing the said Lady-day, in the said year of Our Lord 1789, when the said G. A. departed this life, all rent for the said demised tenement, with the appurtenances for the time last aforesaid, being wholly in arrear and unpaid to the said G. A. to wit, at the parish aforesaid, in the county aforesaid, and the said G. V. lord V. and M. A. executors and executrix as aforesaid, aver, that the yearly value of the said demised tenement, with the appurtenances so held over, and from the possession of the said G. A. deceased in his lifetime, by the said William, in manner and form aforesaid, at the said time of the decease of the said G. A. amounted to a large sum of money, to wit, the sum of pounds of lawful money of Great Britain, and by reason of such holding over and withholding of the said demised tenement, with the appurtenances, to the said G. A. deceased, and of other the premises, and by force of the statute in such case made and provided, an action hath accrued to the said G. V. lord V. and M. A. executors and executrix as aforesaid, to demand and have of and from the said William pounds, that is to say, at double the yearly value of the said demised tenement, with the appurtenances, so held over as aforesaid for the said time which the said William so held over the same, and kept the said G. A. deceased out of the possession thereof as aforesaid, parcel of the said sum of pounds above demanded: And whereas the said writing heretofore, in the lifetime of the said G. A. deceased, to wit, on the twenty-seventh day of October, in the year of Our Lord 1789, at the parish aforesaid, in the

the county aforesaid, at his special instance and request, and by and with the permission of the said G. A. deceased, had held, used, occupied, possessed, and enjoyed a certain other tenement, consisting of [the same as above], of the said G. A. situate in the parish aforesaid, in the county aforesaid, for a long space of time then elapsed, to wit, from the twenty-fifth day of March then last past, to the said twenty-fifth day of September, in the year last aforesaid, at and under a certain yearly rent, to wit, the yearly rent or sum of one hundred and five pounds of lawful money of Great Britain, payable half-yearly, to wit, on the twenty-fifth day of September, and the twenty-fifth day of March in each year, by the said William to the said G. A. for the same, to wit, at the parish aforesaid, in the county aforesaid: And the said G. V. lord V. and M. A. executors and executrix aforesaid, in fact say, that at the time of the death of the said G. A. deceased, the said rent for the said last-mentioned premises for the time aforesaid, amounting to a large sum of money, to wit, the sum of sixty-one pounds five shillings of like lawful money, was wholly due and unpaid to the said G. A. deceased, and yet remains wholly in arrear and unpaid, to wit, at the parish aforesaid, in the county aforesaid, whereby an action hath accrued to the said G. V. lord V. and M. A. executors and executrix as aforesaid, to demand and have of and from the said W. the said last-mentioned sum of money, other parcel of the said sum of pounds above demanded: And whereas the said W. heretofore, in the lifetime of the said G. A. deceased, to wit, on the twenty-fifth day of October, in the said year of Our Lord 1789, at the parish aforesaid, in the county aforesaid, at the special instance and request of the said William, and by the permission of the said G. A. had held, used, occupied, possessed, and enjoyed a certain other tenement of the said G. A. consisting of [the same as above], situate in the parish aforesaid, in the county aforesaid, for a long space of time, to wit, from the twenty-sixth day of March then last, to the said twenty-fifth day of September in the year last aforesaid, for as much rent as the said G. A. reasonably deserved to have for the said last-mentioned premises, to be paid by the said W. for the same, for the time in which the said William used and occupied the same, to wit, at the parish aforesaid, in the county aforesaid: And the said G. V. lord V. and M. A. executors and executrix as aforesaid, in fact say, that the said G. A. deceased, in his lifetime, and at the time of his decease, reasonably deserved to have of the said William, for the use and occupation of the said last-mentioned premises for the time aforesaid, a large sum of money, to wit, the further sum of sixty-one pounds five shillings, and that the same, at the time of the death of the said G. A. deceased, and from thence hitherto hath been, and still is unpaid, of which said last-mentioned premises the said William had due notice, to wit, at the parish aforesaid, in the county aforesaid, whereby an action hath accrued to the said G. V. lord V. and M. A. executors and executrix as aforesaid, to demand and have of and from the said William the said

3d Count, quantum meruit thereof.

last

DEBT ON SIMPLE CONTRACTS.

4th Count, money had and received to the use of executors, and common conclusion in debt.

last-mentioned sum of money, other parcel of the said sum of pounds above demanded: And whereas afterwards, to wit, on the twenty-eighth day of October, in the year of Our Lord 1789, to wit, at the parish aforesaid, in the county aforesaid, the said William had and received a large sum of money, to wit, the sum of sixty-one pounds five shillings of like lawful money, to the use of the said G. V. lord V. and M. A. executors and executrix as aforesaid, to be paid to the said G. V. lord V. and M. A. executors and executrix as aforesaid, when he the said William should be thereto afterwards requested, and thereby then and there became indebted to the said G. V. lord V. and M. A. as such executors and executrix as aforesaid in the said last-mentioned sum of money to be paid to them when he the said William should be thereto afterwards requested, whereby an action hath accrued to the said G. V. lord V. and M. A. as such executors and executrix as aforesaid, to demand and have of and from the said William the said last-mentioned sum, other parcel of the said sum of pounds above demanded: Yet the said William, although often requested, hath not paid the said sum of pounds above demanded, or any part thereof, to the said G. V. lord V. and M. A. executors and executrix as aforesaid, or either of them, but he so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said G. V. lord V. and M. A. executors and executrix as aforesaid, of twenty pounds; and therefore they bring their suit, &c.: And the said G. V. lord V. and M. A. executors and executrix as aforesaid, bring into court here the letters testamentary of the said G. A. deceased, whereby it fully appears to the court here that the said G. V. lord V. and M. A. are executors and executrix of the last will and testament of the said G. A. deceased, and have administration thereof, &c. Pledges, &c.

T. BARROW.

DEBT FOR RENT ON A PAROL DEMISE.

Michaelmas Term, 23. Geo. III.

(a) Declaration in debt for rent, at the suit of lessee against the assignee of the lessor of a lease for years.

N.B. Defendants was the executor of the will, and plaintiff elected to sue him as assignee.

As to verdict, vide 2. Cramp. Prac. 114.

MIDDLESEX, to wit. Edward Cot and Peter Cot complains of Edward Capper being in the custody, &c. being of a plea, that he tender to them pounds of lawful, &c. which he owes to and unjustly detains from them, &c. for that whereas by a certain indenture made the twentieth day of July, A. D. 1780, to wit, at the parish of St. Leonard Foster, in the liberty of Westminster, in the county of Middlesex, between said plaintiffs of the one part, and one Mary Lee of the other part (one part of which said indenture, sealed with the seal of said Mary Lee, said plaintiffs now bring into court here, the date whereof is the day and year aforesaid), they said plaintiffs for the considerations therein

(a) This first Count is on lease, the other Counts are on a parol demise.

mca

mentioned, did, and each of them did demise, lease, and to farm let unto said Mary Lee, her executors, administrators, and assigns, all that messuage, &c. to have and to hold said messuage, &c. unto said Mary Lee, her executors, administrators, and assigns from &c. to, &c. yielding and paying, &c. as by said indenture, reference being thereto had, will amongst other things more fully and at large appear; by virtue of which said indenture said Mary Lee, after the making thereof, to wit, on the thirtieth day of September, in the year 1780 aforesaid, entered into all and singular said premises thereby demised, with the appurtenances, and became and was possessed thereof for said term so to be thereof demised as aforesaid, to wit, at the parish aforesaid; and said plaintiffs in fact further say, that said Mary Lee being so possessed of said demised premises, with the appurtenances, for said term so to her thereof demised as aforesaid, afterwards and during the continuance of said demise, to wit, on the first day of December, A. D. 1781, at the parish aforesaid, all the estate, right, title, interest, term of years then to come and unexpired, property, claim, and demand whatsoever of her said Mary Lee of and into said demised premises, with the appurtenances, by assignment thereof then and there legally made, came to and vested in the said defendant, by virtue whereof said defendant afterwards, to wit, on the day and year last aforesaid, entered into said demised premises, with the appurtenances, and become and was, and from hitherto hath been and still is thereof possessed for the residue and remainder of said term so thereof demised as aforesaid, to wit, at the parish aforesaid; and said plaintiffs, in fact further say, that although they said plaintiffs always from the time of making said indenture hitherto have well and truly performed and fulfilled every thing in said indenture contained on their part and behalf to be done and performed; yet protesting that said defendant since the said assignment so made to him as aforesaid, hath not performed or fulfilled any thing in said indenture contained on the part and behalf of said Mary Lee, and her assigns, to be performed and fulfilled, they said plaintiffs in fact say, that after said assignment so made to said defendant as aforesaid, and before the exhibiting of the bill of them said plaintiffs, to wit, at Michaelmas day, on the twenty-ninth day of September, in the year of Our Lord 1782, at the parish aforesaid, twelve pounds of the said yearly rent of twenty-four pounds in the aforesaid indenture mentioned, and thereby reserved as aforesaid for one half year of said demised term, ending and ended on that day in the year last aforesaid, became due and payable from said defendant as such assignee as aforesaid to said plaintiffs, and still are in arrear and unpaid; whereby an action hath accrued to said plaintiffs to demand and have of and from said defendant said twelve pounds so in arrear and unpaid as aforesaid, parcel of said pounds above demanded. And whereas said plaintiffs heretofore, to wit, on the twenty-fifth day of March, A. D. 1781, at the parish aforesaid, did demise and let unto said

23 Count.
Court in debt
for rent, at suit
of lessor against

assignee of lessee on a parol demise, from year to year

Mary

(1) "other"

Mary Lee, a certain (1) vault or cellar of them said plaintiffs, situate, lying, and being in said parish of, &c. for and during and unto the full end and term of one year from thence next ensuing, and so from year to year for so long time as they said plaintiffs and M. L. their respective executors, administrators, and assigns should please, at and under the clear yearly rent or sum of three pounds of lawful money of Great Britain, to be therefore paid to said plaintiffs by said Mary Lee, her executors, administrators, or assigns, quarterly, by even and equal portions, by virtue of which last-mentioned demise, said Mary Lee, after the making thereof, to wit, on the said twenty-fifth day of March 1781 aforesaid, entered into said (2) vault or cellar so demised to her as aforesaid, with the appurtenances, and became and was possessed thereof, to wit, at the parish aforesaid; and said plaintiffs further say, that said Mary Lee being so possessed of said vault or cellar as aforesaid, with the appurtenances, afterwards and (3) *during the continuance of the aforesaid demise thereof*, to wit, on the first day of December, in the year 1781 aforesaid, at the parish aforesaid, all the estate, right, title, interest, term, property, claim, and demand whatsoever of her said M. L. of, in, and to said last-mentioned demised premises, with the appurtenances, by assignment thereof then and there legally made, came to, and vested in said defendant, by virtue whereof said defendant afterwards, to wit, on the day and year last aforesaid, entered into said vault or cellar, with the appurtenances so demised as aforesaid, and became and

(2) "last-mentioned"

(3) "before the end and expiration of said last-mentioned"

(4) "possessed thereof, and so continued from thence until the end and expiration of one year from the making of said demise thereof"

(4) *was, and from thence hitherto hath been, and still is thereof possessed, under and by virtue of said demise so thereof made as aforesaid*, to wit, at the parish aforesaid; and said plaintiffs in fact further say, that said defendant being so possessed (5) *as last aforesaid, whilst he was so possessed, to wit, on the aforesaid twenty-ninth day of September*, in the year 1782 aforesaid, at, &c. aforesaid, the sum of three pounds of like lawful money of the said yearly

(5) "of said last-mentioned demised premises with the appurtenances, at the end and expiration of said year, from the making of said demise thereof as aforesaid, to wit, on a 25th of March, 21. 108."

rent of sum of three pounds so reserved as aforesaid, one (6) year of said last mentioned demise ending and ended on that day in the year last aforesaid, became due and payable from said defendant to said plaintiffs, and still are in arrear and unpaid, to wit, at, &c. aforesaid, whereby an action hath accrued to said plaintiffs to demand and have of and from said defendant of three pounds so in arrear and unpaid as aforesaid, or parcel of said pounds above demanded; And whereas [&c. another Count like the last, only omitting what is in Italics, and interting what is in the margin]: And whereas said plaintiffs heretofore, to wit, on the twenty-fifth day of March, in the year 1782 aforesaid, did demise

(6) "half"

4th Count, for rent at suit of lessor against the lessee, on a parcel demise from year to year.

and let unto said defendant a certain other vault or cellar of said plaintiffs, with the appurtenances, situate, &c. for and during and unto the full end and term of one year from thence next ensuing, and so from year to year for so long a time as they the said plaintiffs and said defendant should please, at and under the clear yearly rent or sum of three pounds of lawful, &c. to be therefore paid to said plaintiffs by said defendant, quarterly, by even and equal portions,

portions, by virtue of which said last-mentioned demise, he said defendant after the making thereof, to wit, on said twenty-fifth of March, in the year 1782 aforeaid, entered into said last-mentioned vault or cellar so demised to him as aforeaid, with the appurtenances, and became and was, and from thence hitherto hath been, and still is thereof possessed; and said plaintiffs in fact further say, that said defendant being so possessed as last aforeaid, afterwards and whilst he was so possessed, to wit, on said twenty-ninth day of September, in the year 1782 aforeaid, at, &c. aforeaid, one pound ten shillings of said last-mentioned demise, ending and ended on that day in the year last aforeaid, became due and payable from said defendant to them said plaintiffs, and still are in arrear and unpaid, to wit, at, &c. aforeaid, whereby an action hath accrued [&c. as before]: And whereas said plaintiffs heretofore, to wit, on said twenty-fifth day of March, in the year 1781 aforeaid, at the parish aforeaid, did demise and let unto said M. L. a certain other vault or cellar of them said plaintiffs, with the appurtenance, situate, lying, and being in said parish of, &c. for and during and unto the full end and term of one year from thence next ensuing, and so from year to year for so long time as they said plaintiffs and said Mary Lee should please, at and under the clear yearly rent or sum of three pounds of lawful, &c. to be therefore paid by said M. L. her executors, administrators, or assigns, quarterly, by even and equal portions, by virtue of which said last-mentioned demise said M. L. after the making thereof, to wit, on said twenty-fifth day of March, in the year 1781 aforeaid, entered into said last-mentioned vault or cellar, with the appurtenances as aforeaid, afterwards, and during the continuance of said last-mentioned demise, to wit, on the first day of December, in the year 1781 as aforeaid, at, &c. aforeaid, all the estate, right, title, property, interest, claim, and demand whatsoever of said M. L. of, in, and to said last-mentioned demised premises, with the appurtenances, by assignment thereof then and there legally made, came to and vested in said defendant, by virtue whereof he said defendant afterwards, to wit, on the day and year last aforeaid, entered into said last-mentioned vault or cellar, with the appurtenances so demised as aforeaid, and became and was possessed thereof for the residue and remainder of said demise so thereof made as aforeaid, and so continued from thence until the end and expiration of said term so thereof demised as aforeaid: and said plaintiffs in fact further say, that said defendant hath always from the end and expiration of said last-mentioned demise to said M. L. that is to say, from twenty-fifth day of March 1782 aforeaid, hitherto continued and still doth continue in the possession, use, or occupation of said last-mentioned demised premises, with the appurtenances, as tenant thereof to them said plaintiffs, that is to say, as tenant thereof by the permission and sufferance of them said plaintiffs, to wit, at, &c. aforeaid, whereby and by means whereof, said defendant on the aforeaid twenty-ninth day of September 1782 aforeaid, at, &c. aforeaid, became

5th Count, in debt for rent, against defendant as tenant by sufferance, where defendant had continued in possession of premises after expiration of a term, whereof he was assignee.

liable

DEBT.—FOR CARRIAGE OF GOODS.

liable to pay, and ought to have paid to said plaintiff the sum of one pound ten shillings, of lawful money, &c. for half a years rent of said last-mentioned demised premises, on the day and year last aforesaid, due and payable to said plaintiffs, under and by virtue of said last-mentioned tenancy thereof, and that the same are still in arrear and unpaid to them said plaintiffs, to wit, at, &c. aforesaid, by means whereof an action hath accrued to said plaintiffs to demand, &c. residue, &c.; yet, &c. (common conclusion in debt).

V. LAWES.

Declaration. In
debt, common
Counts for mo-
ney laid out,
indebitatus and
quantum meruit
for carriage of
goods, indebita-
tus and quantum
meruit for goods
sold and deliver-
ed, money lent,
had, and re-
ceived.

THOMAS STEVENS, late of, &c. taylor, was summoned to answer Walter Wiltshire, in a plea that he render to him the said plaintiff the sum of one hundred and forty pounds of lawful money of Great Britain, which he owes to and unjustly detains from him the said plaintiff, and thereupon the said plaintiff by A. B. his attorney, complains, that whereas he the said plaintiff heretofore, to wit, on, &c. at, &c. at the special instance and request of the said defendant, laid out, expended, and paid for the said defendant, a large sum of money, to wit, the sum of twenty pounds of lawful money of Great Britain, whereby the said defendant then and there became indebted to him the said plaintiff in the said sum of money, to be paid to him the said plaintiff when he the said defendant should be thereunto afterwards requested, whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of money *in which he so stood indebted as aforesaid*, parcel of the said sum of money above demanded: And whereas he the said plaintiff heretofore, to wit, on, &c. at, &c. at the like special instance and request of the said defendant, and for him the said defendant carried and conveyed in and by a certain carriage of him the said plaintiff, certain goods and merchandizes of the said defendant for a certain sum of money, to wit, the further sum of twenty pounds of like lawful money, whereby the said defendant, &c. &c. (as in first Count, only omitting what is in *Italic*): And whereas he the said plaintiff, heretofore, to wit, on, &c. at, &c. at the like special instance and request of the said defendant, and for him the said defendant carried and conveyed in and by a certain other carriage of him the said plaintiff, certain other goods and merchandizes of the said defendant for so much money as he the said plaintiff reasonably deserved to have for the same; and the said plaintiff avers, that he therefore reasonably deserved to have of the said defendant a certain other sum of money, to wit, the further sum of twenty pounds of like lawful money, to wit, at, &c. whereof the said defendant afterwards, to wit, on, &c. there had notice, whereby the said defendant (as in 2d Count to the end): And whereas the said plaintiff heretofore, to wit, on, &c. at, &c. at the like special instance and request of the said defendant, sold and delivered to him the said defendant, who then and there bought of the said plaintiff certain goods, wares, and merchandizes of him the said plaintiff

plaintiff for a certain sum of money, to wit, for the further sum of twenty pounds of like lawful money, whereby he the said defendant, &c. (as the last Count): And whereas, &c. at the like special instance and request of the said defendant, sold and delivered to him the said defendant, who then and there bought of the said plaintiff certain goods, wares, and merchandizes of him the said plaintiff for so much money as the said last-mentioned goods, wares, and merchandizes at the time of such sale and delivery thereof as aforesaid were reasonably worth; and the said plaintiff avers, that the said last-mentioned goods, wares, and merchandizes were, at the time of such sale and delivery thereof as aforesaid reasonably worth a certain sum of money, to wit, the further sum of twenty pounds of like lawful money, to wit, at, &c. whereof the said defendant afterwards, to wit, at, &c. there had notice, whereby the said defendant (as in last): And whereas the said defendant afterwards, to wit, on, &c. at, &c. borrowed of the said plaintiff, who then and there at the like special instance and request of the said defendant, lent to the said defendant a certain other sum of money, to wit, the further sum of twenty pounds of like lawful money, whereby the said defendant, &c. (as before): And whereas the said defendant afterwards, to wit, on, &c. at, &c. had and received to the use of the said plaintiff a certain other sum of money, to wit, other twenty pounds of like lawful money, whereby the said defendant, &c. (as before): Yet, &c.; common conclusion in debt.

V. LAWES.

Michaelmas Term, 26. Geo. III.

LANCASHIRE, to wit. William Bridge complains of Peter Declaration in
Manchester, being in the custody of the sheriff of the county of debt against
Lancaster, by virtue of a writ of *latitat*, issuing out of the court defendant, for
of our said lord the king, before the king himself here, against the not paying
said Peter at the suit of the said William, of a plea that he render the plaintiff a
to the said William the sum of five hundred and seventy-four sum of money
pounds eight shillings and tenpence of lawful money of Great lent on certain
Britain, which he owes to and unjustly detains from him; for premises.
that whereas by a certain indenture, tripartite, made on the
twenty-sixth day of November, in the year of Our Lord 1783, to
wit, at Manchester, in the county of Lancaster aforesaid, between
Jeremiah Bramal of the first part, the said Peter, and Sarah his
wife, of the second part, and the said William of the third part
(one part of which said indenture, sealed with the seal of the said
Peter, he the said William now brings here into court, the date
whereof is the same day and year aforesaid), after reciting as
therein is recited, the said Jeremiah Bramal for the consideration
therein mentioned, at the request and by the direction and ap-
pointment of the said Peter, testified as therein also is mentioned,
did bargain, set, assign, transfer, set over, ratify, and confirm unto
the said William, his executors, administrators, or assigns, certain
messuages, cottages, dwelling houses, or premises therein par-
ticularly

ticularly mentioned and described for the residue of certain terms also therein mentioned, provided always, and the said indenture was upon this express condition, that if the said Peter, his heirs, executors, or administrators, or any of them, did and should well and truly pay, or cause to be paid unto the said William, his executors, administrators, or assigns, the full and just sum of five hundred and twenty-four pounds eight shillings and ten-pence of good and lawful money of Great Britain, upon the twenty-sixth day of May then next ensuing, that is to say, on the twenty-sixth day of May, in the year of Our Lord 1784, together with lawful interest for the same, after the rate of five pounds for each hundred, without fraud or delay, and without making any deduction, defalcation, or abatement whatsoever out of the same, or any part thereof, for or in respect of any taxes, charges, assessments, impositions, or other cause, matter, or thing whatsoever then already taxed, charged, assessed, or imposed, or which should at any time or times hereafter be taxed, charged, assessed, or imposed upon the said hereditaments and premises, or any part thereof, or upon the occupiers of the said premises, or any part thereof, or upon the said William, his executors, administrators, or assigns, or any of them, for or in respect of the said thereby assigned premises, or any part thereof, or upon the said sum of five hundred and twenty-four pounds eight shillings and tenpence, and interest, or any part thereof, by authority or parliament the two several terms of ninety-nine years, and ninety-nine years therein mentioned should cease and determine, and be utterly void, any thing therein contained to the contrary thereof in anywise notwithstanding: And the said Peter did then by covenant, grant, promise, and agree to and with the said William, that the said Peter, his heirs, executors, administrators, and assigns, or some or one of them, should and would without any deduction or abatement for taxes or otherwise as aforesaid, well and truly pay, or cause to be paid to the said William, his executors, administrators, or assigns, the said sum of five hundred and twenty-four pounds eight shillings and tenpence of lawful money of Great Britain, with interest for the same, after the rate of five pounds for one hundred pounds for a year, on the day and in the manner therein before limited and appointed for payment thereof, according to the proviso or condition therein before contained, and the true intent and meaning of the said indenture, as by the said indenture, relation being thereto had, will amongst other things more fully and at large appear: And the said William in fact saith, that the said Peter did not well and truly pay, or cause to be paid unto the said William the sum of five hundred and twenty-four pounds eight shillings and tenpence, with interest for the same, after the rate of five pounds for one hundred pounds for a year, on the day and in the manner in the said indenture in that behalf limited and appointed for payment thereof, according to the proviso or condition in the said indenture in that behalf contained, and the true intent and meaning of the said indenture, nor hath he the said Peter hitherto paid the said sum of

five hundred and twenty-four pounds eight shillings and tenpence, with such interest as aforesaid, or any part thereof to him the said William, but hath wholly refused and neglected so to do, and therein failed and made default, to wit, at Manchester aforesaid, in the county aforesaid; whereby an action hath accrued to the said William to demand and have of and from the said Peter the said sum of five hundred and twenty-four pounds eight shillings and tenpence, with such interest as aforesaid, amounting to a large sum of money, to wit, the sum of fifty pounds of lawful money of Great Britain, and making together with the said sum of five hundred and twenty-four pounds eight shillings and tenpence, the said sum of five hundred and seventy-four pounds eight shillings and tenpence above demanded: Nevertheless the said Peter (although often requested, &c.) hath not as yet paid the said sum of five hundred and seventy-four pounds eight shillings and tenpence above demanded, or any part thereof to the said William, but to pay the same, or any part thereof to the said William, he the said Peter hath hitherto wholly refused, and still doth refuse so to do, to the damage of the said William of twenty pounds; and therefore he brings suit, &c.

WORCESTERSHIRE, to wit. The Company of the Proprietors of the Dudley canal navigation complain of George Maul, being, &c. in a plea that he tender to the said company two hundred and fifty pounds of lawful, &c. which he owes to and unjustly detains from him; for that whereas long before and at the time of exhibiting the bill of the said Company in this behalf, the said George became and was, and yet is a subscriber of a large sum of money, to wit, pounds, towards the making and completing a certain navigable canal mentioned and described in a certain act of parliament, made at the parliament of our lord the present king, holden at Westminster, in the sixteenth year of the reign of the lord the present king, intituled, "An Act for making and maintaining a Navigable Canal within and from certain Lands belonging to T. T. F. of pure, in the Parish of, &c. in the County of W. to join and communicate with the Stourbridge Navigation at a place called Black Delf, upon Petnet Creek, in the Parish of, &c. in the County of S.;" and also in a certain other act of parliament, made at the parliament of our lord the present king, holden at Westminster in the twenty fifth year of the reign of our said lord the king, intituled, "An Act for extending the Dudley Canal to the Birmingham Canal, at or near Tipton Green, in the county of S.;" also in a certain other act of parliament, made at the parliament of the said lord the king, holden at Westminster, in the thirtieth year of the reign of the said lord the king, intituled, "An Act for effectually carrying into execution two Acts of the sixteenth and twenty-fifth Years of his present Majesty, for making and maintaining a Navigable Canal from the Stourbridge Navigation to the Birmingham and Fazely Canal Navigations, in the Coun-

Declaration in debt, by the proprietors of the Dudley canal, against defendant, for a sum of money, being his share for defraying the expenses of the canal

* See Debt on Statutes, *post*.

"ties of W. and S. to wit, at, &c. in, &c.": And the said George by virtue of such his subscription became and was, and yet is a proprietor of the said navigation, and the owner of a certain share therein of the value of one hundred pounds, and as such subscriber, proprietor, and owner, by such his said subscription, and by virtue of the said several acts, he the said George became liable to pay such call and calls of money to defray the expences of carrying on the said navigation, as the said general assembly or committee of the said company should from time to time find wanting and necessary for those purposes, and to such person or persons, and in such manner as the said general assembly or committee should from time to time appoint and direct for the use of the said undertaking, so that no call exceeded the sum of ten pounds upon each share, and so as no call should be made within the space of two months from the preceeding call, to wit, at, &c. in, &c.: And the said Company in fact say, that after the said George became such subscriber, and so liable as aforesaid, to wit, on , to wit, at, &c. in &c. a general assembly and committee of the said Company duly constituted, finding it necessary for the purpose of the said navigation to make a call of money from the proprietors thereof, met together by authority of the said acts, and no call having been made within two months preceeding that time, then and there made a certain call of money from the proprietors of the said navigation, amounting to the sum of ten pounds upon each share, to be paid to the said Company for the necessary purpose of defraying the expences of carrying on the said navigation, of which said call, the said George so being such subscriber and proprietor as aforesaid had notice, whereby and by force of the said statutes the said George became liable to pay to the said Company the sum of ten pounds, being the said call of money upon the said share of him the said George in the said navigation, whereby and by force of the said statutes an action hath accrued to the said committee, to demand and have of and from the said George the said sum of ten pounds, parcel of the said sum of two hundred and fifty pounds above demanded: And whereas the said George being such proprietor and subscriber of the said navigation, and owner of the said share therein as aforesaid, and so liable as aforesaid, afterwards, to wit, on , at, &c. a general assembly and committee of the said Company duly constituted finding it necessary for the purpose of the said navigation to make a call of money from the proprietors thereof, met together by authority of the said acts, and no call having been made within two months preceeding that time, then and there, to wit, on, &c. in, &c. made a certain other call of money from the proprietors of the said navigation, amounting to the sum of ten pounds upon each share, to be paid to the said Company for the necessary purpose of defraying the expences of carrying on the said navigation, of which said last-mentioned call the said George, so being such proprietor and subscriber as aforesaid, then and there had notice, whereby and by force of, &c. (as in first Count). There were several other Counts all similar to the

The time of
making the call.

2d Count.

the last, except for different calls on different days: And whereas the said George afterwards, to wit, on, &c. at, &c. was indebted to the said Company in a large sum of money, to wit, the sum of fifty pounds, of, &c. for and upon divers, to wit, five calls of money of the amount of ten pounds respectively, upon each of the said shares of the said navigation, of which the said George was owner and proprietor as aforesaid, to defray the expences of carrying on the said navigation, theretofore duly and by authority of the said acts made upon the said George as such subscriber, proprietor, and owner as aforesaid, whereby an action hath accrued, &c.: And whereas, &c. for money paid, laid out, &c.: And whereas, &c. for money had and received: Yet, &c. common conclusion in debt.

F. BOWER.

Mr. BARROW, who drew the declaration before it was fitted by Mr. Bower, gave the following opinion:

Upon duly considering this case, and the acts of parliament upon which it is founded, I do not think it necessary to sustain the action that I should recite them; each act is made a public act,

and all judges, justices, and other persons are required to take notice of it as such. It should seem therefore sufficient to state in general terms the defendant's subscription, and his liability to pay the calls by authority of the act.

T. BARROW.

Hilary Term, 23. Geo. III.

HEREFORDSHIRE, to wit. Richard Heath complains of Timothy Weaver, being, &c. of a plea that he tender to the said Richard thirty-four pounds of, &c. which he owes to and unjustly detains from him: for that whereas the said Timothy, on, &c. at, &c. was indebted to the said Richard in the sum of seventeen pounds, part of the said sum of thirty-four pounds above demanded, for divers goods, wares, and merchandizes of the said Richard before that time sold and delivered to the said Timothy, at his special instance and request: And whereas the said Timothy afterwards, to wit, on, &c. at, &c. had borrowed of the said Richard the sum of other seventeen pounds of lawful, &c. residue of the said sum of thirty-four pounds above demanded to be paid to the said Richard when he the said Timothy should be thereto afterwards requested: Yet the said Timothy, although often requested, hath not paid the aforesaid sum of thirty-four pounds or any part thereof, to the said Richard, but to pay the same to the said Richard he the said Timothy hath hitherto wholly refused, and still doth refuse, to the damage of the said Richard of ten pounds; and therefore he brings his suit, &c.

Drawn by MR. CROMPTON.

And the said Timothy, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that he cannot deny the aforesaid action of the said Richard, nor but that he doth owe to the said Richard the aforesaid sum of thirty-four pounds,

Declaration in debt, for goods sold and delivered, a 2d Count on a *mutual*.

Judgment by, *nil d.c.t.*

DEBT.—ON SIMPLE CONTRACTS.

in manner and form as the said Richard hath above thereof complained against him; therefore it is considered, that the said Richard do recover against the said Timothy his said debt, and also pounds for his damages which he hath sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended to the said Richard by the court of our said lord the king now here by his assent adjudged; and the said Timothy, in mercy, &c.

Drawn by MR. CROMPTON.

DEBT ON BYE LAWS.

Declaration in
debt to recover
a penalty for ex-
posing flesh to
sale in the city
of Norwich,
contrary to a
bye-law.

NORWICH, to wit. Robert Ray, late of the city of Norwich, in the county of the same city, butcher, was summoned to answer the mayor, sheriffs, citizens, and commonalty of the city of Norwich, of a plea that he tender to them forty shillings of good and lawful money of Great Britain, which he owes to them and unjustly detains, &c.; and whereupon the said mayor, sheriffs, citizens, and commonalty of the city of Norwich, by Nehemiah Lodge their attorney, say, that whereas the said city of Norwich is an ancient city, and the citizens of the same city, at the time of making the letters-patent hereafter mentioned and long before, had been a body corporate and politic in deed and name, by the name of mayor, sheriffs, citizens, and commonalty of the city of Norwich: And whereas our sovereign lord Charles the Second, late king of England, on the twenty-sixth day of June, in the fifteenth year of his reign, by his letters-patent sealed with his great seal of England, bearing date the same day and year, which the said mayor, sheriffs, citizens, and commonalty do bring here into court, reciting, that whereas the city of N. was an ancient and populous city and county of itself, and had been anciently incorporated by the name of the mayor, &c. of the city of N. and as well by the same name as by the names of the citizens of Norwich, and of citizens and commonalty of N. and inhabitants in the same city, had in times then past had and enjoyed very many jurisdictions, franchises, liberties, immunities, and privileges, as well by the grant of divers of his predecessors, late kings and queens of England, as in respect to divers prescriptions and customs used in the same city, from time whereof the memory of man was not then to the contrary, and then did hold, use, and enjoy the same, for the better support of the aforesaid city, and the greater increase of the art and manufacturers there, and for public advantage and benefit of his kingdom of England; and also reciting, that whereas his well beloved subjects the then mayor, sheriffs, citizens, and commonalty of said city of Norwich, have made their most humble supplication to him, that he would graciously exhibit and extend

ON BYE LAWS.

tend to the then mayor, &c. of the said city of Norwich, his royal favour and munificence as well in the ratification and confirmation of the aforesaid body corporate, and the ancient liberties and privileges as for the public good and better government of the said city, and the more speedy amendment and punishment of evils and inconveniences which thereof late had sprung up within the said city, and for want of due and reasonable correction did then continue as should seem best and most expedient, he the said late king, of his special grace and favour, and from his certain knowledge and mere motion, did for himself, his heirs, and successors, will, ordain, grant, and confirm to the aforesaid mayor, &c. of the said city of Norwich, and their successors, an incorporation and body incorporate, the confirmation of liberties and customs aforesaid, and all and all kind of liberties, free customs, franchises, and immunities, exemptions, quietances, and jurisdictions whatsoever of the said city, and also all and singular the same, such manner of lands, tenements, fairs, and markets for selling of cattle, customs, liberties, privileges, franchises, immunities, quietances, exemptions, jurisdictions, and hereditaments whatsoever which then the citizens of his city of N. aforesaid, or which the citizens and commonalty of the city of N. aforesaid, of which the then mayor, &c. of the said city of N. and their predecessors whosoever, by whatsoever name they had been deemed, reckoned, or called, or by whatsoever name or whatsoever incorporation, or by pretence of whatsoever incorporation they had formerly been incorporated, had lawfully had, held, used, or enjoyed, or ought to have been held, used, or enjoyed by reason or pretence of any charters or letters-patent by him or any of his progenitors, or any other person or persons whatsoever, any way made, granted, or confirmed, or by whatsoever other legal way, right, custom, use, prescription, or title in former times lawfully used, had, enjoyed, or accustomed, as by the said letters-patent (amongst other things) more fully appears; which said letters-patent said mayor, &c. then and there at the said city of N. aforesaid accepted: And said mayor, &c. further say, that the said mayor, &c. afterwards, that is to say, on the first of September A. D. 1740, at the Guildhall of said city, within the said city, being then and there in council assembled, did make a certain bye law or ordinance for the benefit of the said city, thereby reciting, that whereas the mayor, &c. of that city, and their predecessors, by their ancient rights and privileges, had for many years then past had two markets weekly throughout the year, held upon Wednesday and Saturday in every week in the place or places called the Upper and Lower Market in the said city where the same were then kept, and of which said markets the mayor of said city for the time being had the correction, inspection, and government, with the same powers and jurisdictions as clerks of other markets usually had and exercised, and then were and during the time aforesaid had been leased to them and their successors of certain stalls or shambles for the sale of butcher's meat in the said market-place

DEBT.—ON SIMPLE CONTRACTS,

called the Upper Market, erected, repaired, and maintained at their own costs and charges, for the use and convenience of the butchers inhabiting within the said city, and all other butchers resorting thereunto to expose their flesh meat to sale; and the said butchers theretofore had, and still ought to bring the same into the said market upon the said market-days, and therein or upon said stalls or shambles, and not elsewhere, expose in the said city their flesh meat to sale, to the intent that the mayor of the said city for the time being, who by charter or otherwise was clerk of the said market, might by himself or some other person by him authorized and deputed for that purpose, be the better enabled to perform his duty in examining and correcting the abuses committed in offering to sale corrupt and unwholesome flesh meats; and also reciting that whereas the said stalls or shambles then were and theretofore had been proper and sufficient for the sale of butcher's meat, and for which the said butchers paid no more than reasonable rents or sums of money, so that said butchers ought not to expose their flesh meat to sale in any other places or shops in the said city, when then of late had too often been come, to the great damage and inconvenience of the inhabitants of the said city, and of all other persons resorting to the said markets to buy flesh meats for the use of themselves and families; and also reciting that whereas, at the general quarter sessions of the peace holden for the said city on Saturday the nineteenth of April then last past, it was (amongst other things) presented by the grand inquest of the said city and county of the same, that by the ancient customs of the said city the common butcher had been limited and confined on market days to expose to sale and vend their flesh meat in open market in the shambles or stalls of old time erected for that purpose, and not elsewhere, by which means corrupt and unwholesome meats had been discovered, and the markets preserved, and that the late and then present practice of many of the common butchers of that city, or other butchers exposing their flesh meat to sale in market times, either in private streets or place, or by hawking about the city and a nuisance of ill consequence and scandal to the government of the city, and that it was necessary that offenders therein, for the future, should be duly prosecuted, the said mayor, &c. being in court assembled as aforesaid, well weighing and considering the matters in the said presentment contained, and the evil consequences that had arisen and might arise from such private and clandestine selling of flesh meats as aforesaid, did, by the said bye law or ordinance, order and ordain that all butchers inhabiting in the said city, and all other butchers resorting to the said city and exposing flesh meats to sale there on the market days, and during each market day for the time to come, should bring the same into the public and open market or place where such markets were and should be held and kept, and then in said stalls or shambles expose the same to sale, and not elsewhere, during the said market time, under penalty that every such butcher that should sell or expose

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pose

ON BYE LAWS.

pose to sale their flesh meat in any other place or places within said city, or the liberties thereof, during said market times, or at any time or times from and after the first of November then next coming, should forfeit to the mayor, &c. of said city the sum of forty shillings of lawful money of Great Britain for every such offence, to be levied by distress of the goods and chattels of the person or persons so offending, or else to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster; of which said bye law said defendant then and there had notice: And said mayor, &c. of said city of N. aforesaid further say, that after the making the said bye law or ordinance, that is to say, on, &c. A. D. 1746, the same day being a market day there, to wit, at the city aforesaid, the said defendant then being a butcher inhabiting within said city, exposed to sale and sold within said city, in another place there, out of the public and open market, and the stalls and shambles there, that is to say, at a certain shop of said defendant, situate in the parish of, &c. in the ward of, &c. in the said city, during said market-time, to divers persons to said mayor, &c. unknown, divers parcels of flesh meat, to wit, &c. contrary to the form and effect of the bye law or ordinance aforesaid, whereby an action hath accrued to the mayor, &c. aforesaid, to demand and have of and from the said defendant the said forty shillings above demanded; nevertheless the said defendant (although often requested) hath not paid to the said mayor, &c. the sum of forty shillings above demanded, or any part thereof, but hitherto altogether hath refused, and still doth refuse to pay the same, or any part thereof, or either of them, to the damage of the said mayor, &c. of fifty pounds. Suit, &c.

BOROUGH of HERTFORD, to wit. Alexander Hewitt was summoned to answer unto Thomas Cadmore, chamberlain of the borough of Hertford, in the county of H. of a plea that he render to him said plaintiff one pound six shillings and eight pence which he owes, and unjustly detains from said plaintiff; and whereupon said plaintiff, by James Atkinson his attorney, complains against the said defendant: for that whereas the said Borough of Hertford, in the county of Hertford, is, and from time immemorial hath been an ancient borough, and the burgesses of the said borough, from time whereof the memory of man is not to the contrary, until and upon the twenty-ninth day of November, in the twenty-third year of the reign of the lord Charles the Second, by his letters-patent sealed under his great seal of England, and now brought here into court, bearing date at Westminster the same day and year aforesaid, did for himself, his heirs, and successors (amongst other things) will, ordain, constitute, grant, and declare, that the borough of H. in the county of H. aforesaid, should be and remain from thenceforth for ever a free borough of itself, and that the burgesses of the said borough, and all

Declaration in
debt at the suit
of the chamber-
lain of the bor-
ough of Hert-
ford, for keep-
ing a shop, and
selling wares,
&c. contrary to
a bye-law.

the

the inhabitants and men dwelling within the boundaries in the said letters-patent specified, by whatever name or names they had theretofore been incorporated or known, or whenever they had been theretofore incorporated or not, and their successors should for ever thereafter be one body corporate and politic in deed, fact, and name, by the name of the mayor, aldermen, and commonalty of the borough of H. and them and their successors, by the name of the mayor, aldermen, and commonalty of the borough of H. in the county of H. the said late king, for himself, his heirs, and successors, did by the same letters-patent erect, make, ordain, constitute, create, confirm, and declare to be one body corporate and politic, in deed, fact, and name; and that by the same name they should have perpetual succession; and the said late king, by his letters-patent aforesaid, did further for himself, his heirs, and successors, will and grant to the said mayor, aldermen, and commonalty of the borough aforesaid, and their successors, that from thenceforth for ever there should and might be in the borough aforesaid one chief and honest man to be elected and named in manner in the said letters-patent specified, who should be and be called the chamberlain of the borough aforesaid, which said chamberlain should have power from time to time to collect and receive all and all manner of rents, sums of money, fines, amerciaments, revenues, profits, commodities, and emoluments whatsoever, to the mayor, aldermen, and commonalty of the borough aforesaid, or their successors in right of said borough, in any manner belonging or appertaining, and to demand and recover the same in law for the use of the said mayor, alderman, and commonalty of the borough aforesaid, and to keep the same in the chamber of the borough aforesaid for the use of the said mayor, alderman, and commonalty of the borough aforesaid, and the same to receive and kept, to dispose of and place out according to the command and appointment of the mayor and alderman of the borough aforesaid for the time being, or the greater part of them, whereof the said king willed that the mayor of the said borough for the time being should be one; and that said chamberlain, by virtue of the chamberlain of the said borough, in the court of record held for the said borough, or in any other of the said late king's courts at Westminster, should have power to prosecute all and all manner of pleas, complaints, actions, suits, and demands personal, for any rents, fines, amerciaments, sums of money, revenues, profits, commodities, and emoluments whatsoever, from time to time due and unpaid to the said mayor, aldermen, and commonalty, and to obtain and receive judgment thereupon, and thereupon to levy execution according to the law and custom of England, and that he should well and faithfully do and execute all other things which might belong to his office of chamberlain of the borough aforesaid to be done, and said late king, by said letters-patent, for himself, his heirs, and successors, did further (amongst other things) will and grant to said mayor, aldermen, and commonalty of the borough aforesaid, and their successors, and the mayor, recorder, and aldermen of the borough aforesaid for the time being, or the

greater

greater part of them (whereof the said king willed that the mayor and recorder of the borough aforesaid for the time being should be two) upon public summons for that purpose assembled, should and might have full power and authority to frame, constitute, ordain, and make from time to time any reasonable laws, ordinances, statutes, decrees, and constitutions whatsoever in writing, which to them or the greater part of them (whereof said late king willed that the mayor and recorder of the borough aforesaid for the time being should be two) should seem to be good, wholesome, and necessary, according to their sound discretions, for the good rule and peaceable government of the borough aforesaid, the mayor, aldermen, and commonalty of said borough, and all and singular other the inhabitants of said borough, limits and precincts of the same, and of all officers, ministers, artificers, and residents within the aforesaid borough, and the limits and precincts aforesaid for the time being, or repairing the same, and for the declaring in what manner or order the same mayor, aldermen, and commonalty of borough aforesaid, and all and singular other the inhabitants, ministers, officers, burgesses, artificers, inhabitants, and residents of the same borough, and the limits and precincts aforesaid, in their offices, functions, businesses, mysteries, and businesses within the borough aforesaid for the time being, should conduct, behave, and demean themselves, and for the public good, the victualling and common utility of the same borough, and for the better management and disposition of the land, tenements, and hereditaments, goods and chattels of the mayor, aldermen, and commonalty of the borough aforesaid, and for all other things and causes whatsoever touching or concerning the said borough aforesaid, the estate, right, and interest thereof; and that the said mayor, recorder, and aldermen of the borough aforesaid, or the greater part of them (whereof said late king willed that the mayor and recorder of the said borough for the time being should be two) when and as often as they should make, ordain, constitute, and establish such laws and institutions, statutes, ordinances, and constitutions in form aforesaid, should have full power and authority to make, ordain, limit, provide, and impose such and such kind of pains, punishments, and penalties by fines or amerciaments against and upon all offenders against such laws, statutes, institutions, constitutions, and ordinances, or any of them, as the said mayor, recorder, and the aldermen of the borough aforesaid, or the greater part of them (whereof the said late king willed that the mayor and recorder of the borough aforesaid for the time being should be two) should seem to be necessary, convenient, and requisite for the observance of the same laws, ordinances, institutions, statutes, and constitutions, and that the said corporation of the borough aforesaid should and might levy, receive, and have the same fines and amerciaments for the use of the same mayor, aldermen, and commonalty of the borough aforesaid, and their successors, without the letter or warrant of said late king, his heirs, or successors, or of any officer or minister, officers or ministers of the said

said late king, his heirs, or successors, and without any act thereof, to be rendered to the said late king, his heirs, or successors, all and singular which said laws, ordinances, statutes, institutions, and constitutions so to be made as aforesaid, the said late king willed should be observed under the pains in the same contained, so that nevertheless such laws, ordinances, institutions, statutes, and constitutions, fines, and amerciaments, should be reasonable and not repugnant or contrary to the laws, statutes, customs, or rights of the said late king's kingdom of England, as by the said letters-patent (relation being thereunto had) may amongst other things more fully and at large appear; which said letters-patent in the then burgesses of the borough of H. aforesaid, afterwards, that is to say, on said twenty-ninth day of November, in the thirty-second year of the reign of the said late king Charles the Second, accepted, to wit, at H. aforesaid: And said plaintiff says, that there now is, and now time whereof the memory of man is not to the contrary, there hath been a certain ancient and laudable custom used and approved of within the said borough of H. that is to say, that no person not being free of said borough should keep any open shop or exercise any trade, mystery, or manual occupation within the said borough, or sell or offer to sale any wares or merchandizes, other than victuals, within the said borough, except at common fairs or in the public or open market held within the same borough: And whereas after the granting of the said letters-patent, and before the committing of the injury herein-after specified, to wit, on the thirtieth day of December, in the fourteen year of the reign of king George the Third, and in the year 1773, John Greenhall, gentleman, then mayor of said borough, Paul Bull, esquire, then recorder thereof, Samuel Atkinson, &c. &c. &c. &c. and &c. aldermen of the said borough, being the greater part of the then mayor, recorder, and aldermen of the said borough, being then duly assembled at a corporate meeting for that purpose held within the said borough of H. on a public summons thereof previously made, did in due manner meet and constitute a certain lawful and reasonable bye law or ordinance, whereby it was then and there ordered and ordained that if any person whatsoever, not being free of said borough, should keep any open shop, or use or exercise any trade, mystery, or manual occupation, to sell any wares or merchandize within said borough other than victuals, except at common fairs, or in the public and open markets holden within said borough, excepting out of that ordinance, constitution, or bye law, all such officers, manner, soldiers, and others, as were authorized and empowered by any act or acts of parliament, to exercise their respective trades, mysteries, or occupations, or to sell wares or merchandizes in any city, borough, or town corporate, within the kingdom of Great Britain, that then every person who should from thenceforth offend against that ordinance, constitution, or bye law, after notice given to him or her thereof by the mayor of the said borough for the time being, or by some other by his direc-

tion or order, should for every such offence forfeit and pay unto the chamberlain of the said borough for the time being the sum of thirteen shillings and fourpence, to the use of the mayor, aldermen, and commonalty of the said borough, and in default of payment thereof such penalty to be sued for and recovered at law to the use of the mayor, aldermen, and commonalty of said borough, by action to be prosecuted by and in the name of the commonalty of the said borough for the time being, in his majesty's court of record holden for the said borough, or in any of his majesty's courts at Westminster, as by the said ordinance or bye law more fully appears; of which said custom and bye law the said defendant afterwards, to wit, on the third day of January 1774, at the parish of St. Mary-le Bow, in the ward of Cheap, in the city of London, had notice: And said plaintiff further saith, that the said defendant, after the making of the aforesaid bye law; and after he had notice thereof, and also after notice and warning was given to the said defendant after the making of the aforesaid bye law, and after he had notice thereof, and also after notice and warning was given to the said defendant by John Grenell, then mayor of said borough, not to offend against the custom and bye law aforesaid, to wit, on the fourteenth of February in the year last-mentioned, at the parish of All Saints, in the borough of H. aforesaid, the bounds, liberties, and premises thereof, and within the jurisdiction of this court, and not in any common fair, or public or open market held within the said borough, did keep a certain open shop in the parish of All Saints aforesaid, in the borough aforesaid, within the bounds, liberties, and precincts thereof, and within the jurisdiction aforesaid, for the purpose of selling and exposing to sale in the same shop wares and merchandizes, to wit, women's pattens, he the said Alexander not being authorized or empowered by any act or acts of parliament so to do, nor being then free of the said borough, contrary to the aforesaid bye law in that behalf made, by reason whereof the said defendant hath forfeited the penalty or sum of thirteen shillings and fourpence, whereby an action hath accrued to the said plaintiff, being then and yet a chamberlain of said borough, to wit, at the parish of All Saints aforesaid, in the borough aforesaid, the bounds, liberties, and precincts thereof, and within the jurisdiction aforesaid, to demand and have of said defendant said thirteen shillings and fourpence, parcel of the said one pound six shillings and eightpence above-mentioned: And whereas also the said defendant, after the making of the aforesaid bye law, and after he had notice thereof, and also after notice and warning was given to the said defendant by John Grenell, then mayor of said borough, not to offend against the custom and bye law aforesaid, to wit, on the twenty-second day of February in the year aforesaid, at the parish of All Saints aforesaid, in the borough aforesaid, the bounds, liberties, and precincts thereof, and within the jurisdiction aforesaid, and not in any common fair, or public or open market held within the same borough, did sell wares and merchandizes, to wit, one pair

pair of women's shoes, in a certain shop in the parish of All Saints aforesaid, in the borough aforesaid, the bounds, liberties, and pre-
 cincts thereof, and within the jurisdiction aforesaid, the said defend-
 ant not being authorized or empowered by an act or acts of
 parliament so to do, not being then free of said borough, contrary
 to the aforesaid bye law in that behalf made, by reason whereof said
 defendant hath forfeited the further penalty or sum of thirteen shil-
 lings and fourpence, whereby an action hath accrued to said plain-
 tiff, being then and yet chamberlain of said borough, to wit, at
 the parish of All Saints aforesaid, in the borough aforesaid, to de-
 mand and have the said last-mentioned thirteen shillings and four-
 pence, residue of said one pound six shillings and eightpence above
 mentioned; nevertheless, &c. (common conclusion in debt.)

Plea to debt on
 a bye law, for
 not accepting
 office of Sheriff
 of London,
 that the de-
 fendant was not
 a fit and able
 person.

THE defendant pleaded the general issue *nil debet*; se-
 condly, that the plaintiff ought not to have or maintain his afore-
 said action thereof against the said defendant, because he says, that
 true it is that the sheriffalty of the said city of L. and the she-
 riffalty of the said county of M. are ancient offices, and that within
 the said city of L. there now are, and from time whereof the me-
 mory of man is not to the contrary, there have been and have used,
 and have been accustomed to be, and still of right ought to be
 two sheriffs of the said city of L. annually chosen, elected, and ap-
 pointed, which said two sheriffs of the said city of L. jointly are
 and constitute, and still of right ought to be and constitute one
 sheriff of the said county of M. and that the said sheriffs of the said
 city of L. for the time being have of right exercised, and still
 of right ought to exercise as well the said office of sheriffs of the
 said city of L. as the said office of sheriff of the said county of
 M. and that such order and act of common council was made
 as said plaintiff hath in his said declaration above alleged; but
 said defendant further saith, that when and at the time he was
 elected and declared to be elected one of the sheriffs of the said
 city of L. together with the said William C. esquire, sheriff
 of the said county of M. in manner and form as the said plaintiff
 hath above in his said declaration alleged, to wit, on the *third*
of July A. D. 1788, he the defendant was of the age of seventy-
six years and upwards, and then was, and continually from thence-
forth hitherto hath been, and still is in a state of great bodily
weakness and infirmity, arising from old age: And the defendant
 further saith, by reason of his said age and bodily weakness and
 infirmity, he at the time when he was so elected and declared to
 be elected to the said offices of sheriffalty, and from that time hi-
 therto hath been and still is wholly unable to perform, discharge,
 and execute the duties and functions of the said offices of sheriff-
 alty; by reason whereof the said election of *the defendant to the said*
offices of sheriffalty was and is void in law, to wit, at the parish
 aforesaid; and thus the defendant is ready to verify: wherefore he
 prays judgment if the plaintiff ought to have or maintain his
 aforesaid action thereof against him; &c.

And,

And, &c. that the plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that when and at the time that he the defendant was put in nomination, and elected and declared to be elected one of the sheriffs of the said city of L. and together with the said William C. esquire, sheriff of the county of M. in manner and form as the defendant hath above in his said declaration alledged, *to wit, on the said third of July A. D. 1788, he the defendant was of a great age, to wit, of the age of seventy-six years and upwards, and then was, and continually from thenceforth hitherto hath been, and still is in a state of great and incurable bodily weakness and infirmity:* And said defendant further says, that by reason of his said age, bodily weakness, and infirmity, he defendant at the time when he was so put in nomination, and elected and declared to be elected to the said offices of sheriffalty as aforesaid, and from that time hitherto hath been, and still is wholly unable to perform, discharge, and execute the duties and functions of the said offices of sheriffalty; *without this, that the defendant, at the said time when he was put in nomination in order for his being at that time elected to be one of the said sheriffs of the said city, and one of the persons to be and serve in the said office of sheriff of the said county of M. for the year then next ensuing, as in the said declaration was last above-mentioned, was a fit and able person to be elected to be one of the said sheriffs of the said city, and one of the persons to be and serve in the said office of sheriff of the said county of M. in manner and form as the said plaintiff hath in his said declaration above alledged; and thus he is ready to verify: wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him, &c.*

NEWMAN KNOWLYS.

And, &c. as to the defendant's plea by him first above pleaded in bar, and whereof he hath put himself upon the country, doth so likewise. And plaintiff, &c. as to the defendant's plea by him secondly above pleaded in bar, says, that he ought not, by reason of any thing therein contained, to be barred from having his aforesaid action maintained against the defendant, *because he says, that the defendant, at the said time when he was so elected and declared to be elected in the said offices of sheriffalty, was a fit and able person to be so elected, and to serve the same offices; without this, that the defendant, at the time when he was so elected, and declared to be elected, was, and from that time hitherto hath been, and still is wholly unable to perform, discharge, and execute the duties and functions of the said offices of sheriffalty, as the defendant hath in that plea alledged; and thus he is ready to verify: wherefore he prays judgment and his debt aforesaid, together with his damages, by occasion of the detaining of that debt to be adjudged to him, &c.* And plaintiff, &c. &c. as to the said plea of the defendant by him lastly above pleaded in bar as before, *says, that the defendant,*

* Of Sheriff of London.

at

DEBT - ON BYE LAW, FOR NOT

at the same time when he was put in nomination in order for his being at that time elected to be one of the said sheriffs of the said city, and one of the persons to be and serve in the said office of sheriff in the said county of M. for the year then next ensuing, as in the said declaration is last above-mentioned, was a fit and able person to be elected to be one of the said sheriffs of the said city, and one of the persons to be and serve in the said office of sheriff of the said county of M. in manner and form as the plaintiff hath in his said declaration above alledged; and this the plaintiff prays may be enquired of by the country, &c.

J. SYLVESTER

The defendant, as to the plea of the plaintiff by him above pleaded in reply to the plea of the defendant by him secondly above pleaded in bar, says, that he the plaintiff, by reason of any thing by him in his said replication above alledged, ought not to have or maintain his aforesaid action thereof against the defendant, because he says, as before, that he the defendant, at the time when he was so elected and declared to be elected as aforesaid, was, and from that time hitherto hath been, and still is unable to perform, discharge, and execute the duties and functions of the said offices of sheriffalty, as the defendant hath in his said plea by him secondly above pleaded alledged; and of this he puts himself upon the country, &c. And the defendant, as to the plea of the plaintiff by him above pleaded, in reply to the plea of the defendant by him lastly above pleaded in bar, and whereof the plaintiff hath put himself upon the country, he the defendant doth so likewise.

NEWMAN KNOWLYS.

LONDON, ff. The master, wardens, assistants, and fellowship of the company of glovers of the city of London, complain of John Beavitt, being, &c. of a plea that he render to them ten pounds of lawful, &c. which he owes to and unjustly detains from them; for that whereas the lord Charles the First, late king of England, Scotland, France, and Ireland, defender of the faith and so forth, by his letters patent, bearing date at Canterbury the tenth of September, in the fourteenth year of his reign, which said letters patent, sealed with the great seal of England, the master, wardens, assistants, and fellowship now bring here into court, the date whereof is the day and year aforesaid, for himself, his heirs, and successors, did (amongst other things) will, ordain, constitute, declare, and grant, that all and singular the said glovers, freemen of the king's late city of L. and all other his subjects that lawfully used the same trade, art, or myltery, within the king's said city of L. and three miles of the same on every side thereof for ever thereafter, for their better order, rule, and government, and for the profit and commodity and relief of the good and honest men, and

and to the fear and terror of the evil and wicked offenders as were or should be of the trade, art, or mystery aforesaid, by virtue of the said letters patent, should be one body corporate and politic in deed and in name, by the name of master, wardens, assistants, and fellowship of the company of glovers of the city of London, and them by name of master, wardens, assistants, and fellowship of the company of glovers of the city of London aforesaid, the said late lord the king did by his said letters patent, for his heirs and successors, really and fully make, create, ordain, erect, constitute, and declare one body corporate and politic in deed and name, to have continuance for ever, and that by the same name they and their successors should and might have perpetual succession; and also that by the same name of master, wardens, assistants, and fellowship of the company of glovers of the city of L. they and their successors should be able to plead and to be impleaded, to answer and to be answered unto, and to defend and to be defended in whatsoever courts and places, and before any judge, or justice, or other persons and officers of the said late lord the king his heirs and successors whatsoever, in all and singular actions, pleas, suits, plaints, matters, and demands of whatever kind, quality, or sort they might be, in the same manner and form as any other of the said late lord the king's liege people and subjects of his realm of E. (being persons able and capable in law) or any other body corporate and politic within this realm of England, can or may plead or be impleaded, answer or be answered unto, defend or to be defended: And further the said late lord the king did will and ordain, and by the said letters patent, for himself, his heirs and successors, did grant unto the said master, wardens, assistants, and fellowship of the company of glovers of the city of L. and to their successors for ever, that for ever there should be one of the said company and corporation in manner and form thereafter in the said letters patent mentioned, to be chosen and named, who should be and should be called the master of the said company of glovers of the city of L.; and likewise that there should be and might be four of the said company and corporation, in manner and form in the said letters patent thereafter mentioned, to be chosen and named, which should be and should be called the wardens of the company of glovers of the city of L.; and also that there should and might be sixteen or more of the said company, according to the direction of the master and wardens for the time being, in manner and form thereafter in the said letters patent expressed, to be named and chosen, which should be and should be called the assistants of the said company of glovers of the city of L. and from time to time should be assisting and aiding to the said master and wardens of the same company; and that the said master, wardens, and assistants, and fellowship of the company of glovers of the city of L. for the time being, or the greatest part of them (whereof the master and two or more of the wardens, for the time being, to be always three or more) should and might have full power and authority, by virtue of the said letters patent, to make, constitute, ordain, and set down from time to time, and also from time to time alter, change, amend,

or make new, such reasonable laws, statutes, decrees, ordinances, and constitutions in writing **whatsoever**, which to them, or the greater part of them as aforesaid (**whereof** the master and two or more of the wardens, for the time being, always to be three or more) should seem good, wholesome, profitable, honest, and necessary, according to their discretions, as well for and concerning such oaths as should be fit to be administered to the master, wardens, and assistants, or any other of the said company and corporation; as also for touching and concerning the trade, art, or mystery of making gloves, and the good order, rule, and government of the same company and corporation, and of every member thereof, and for punishment and reformation of such abuses, deceits, falsities, and other wrongful practices and misdemeanors, from time to time to be committed, used, or practised, either in the deceitful tawing of leather to be used in their trade, or in the making or uttering of bad and deceitful wares, appertaining or in any way belonging to the said mystery of glovers or the using thereof, whereby the loving subjects of the said late lord the king might be wronged, damaged, or abused, or any other wrong, cozenage, deceit, or abuse, offered or used in the said trade at any time whatsoever within the said city of L. and the liberties thereof, or in any other place or places within the limits aforesaid; and also for defraying and bearing the charges of the procuring, maintaining, and continuing of the said fellowship, company, and corporation; and for declaration after what manner, order, and form the said master, wardens, assistants, and fellowship of the said company, and their successors, and all and every other person and persons lawfully using or exercising the said trade, art, or mystery of glovers, within the said late king's city of L. and liberties thereof, or within three miles of the same city, should behave, demean, use, and carry themselves, either in or concerning leather, decentfully or insufficiently tawed, to be used in the said trade of glovers, or otherwise in and concerning their said office, mystery, and work, for the public good and common profit of the said company and corporation, and for all other matters, things, and causes touching or concerning the said art, trade, or mystery, by any manner of means and whosoever the said master, wardens, and assistants, or the greater part of them for the time being (**whereof** the master and two or more wardens for the time being, to be three or more) should do, make, ordain, constitute, and establish any such laws, orders, decrees, ordinances, and constitutions, to make, set, employ, provide, impose, and limit such reasonable fines, payments, and penalties, either by fines and amerancements, or by any other lawful ways or means whatsoever, upon all offenders or breakers of any such laws, ordinances, decrees, orders, or constitutions as to them, or the greater part of them as was aforesaid, should seem necessary, reasonable, fit, and convenient to be made, set, imposed, limited, and provided for the keeping of the same laws, ordinances, decrees, orders, and constitutions; and that the said master, wardens, and assistants, and fellowship of the company of glovers of the city of London, and their successors, should and might from time to time, sue for,
raise,

raise, or levy the same fines, sums of money, or amerciaments to their own and only uses, by such ways and means, and in such manner as to them should seem expedient and agreeable to law, or as was usual or was ordained in and by any other charters of the said lord the late king, or any of his predecessors, kings and queens of England, of like nature lawfully granted to any other companies or corporations within his said city of London, without the let or hindrance of the said lord the late king, his heirs, or successors, or any of the officers or ministers of the said lord the late king's heirs or successors, and without giving or rendering any thing or matter to the said lord the late king, his heirs, or successors, for the same or any part thereof, of all and singular which laws, statutes, decrees, ordinances, and constitutions so to be made, altered, or new made, as was aforesaid, the said lord the king did by the said letters patent, for himself, his heirs and successors, confirm, ratify, and establish, and also willed and commanded to be from time to time observed and kept, under the pains and penalties therein to be contained, so always as the same laws, statutes, decrees, orders, ordinances, constitutions, penalties, fines, and amerciaments as was aforesaid should be reasonable, and not repugnant or contrary to the laws and statutes of the said lord the late king's realm of England, or his prerogative royal, nor to the customs or usages of the said city of London; and for the better executing the said late lord the king's grant in that behalf, the said late lord the king, by the said letters patent for himself, his heirs and successors, did assign, create, name, constitute, and make his well beloved William Smart (therein named) to be the first and then present master of the said company of the city of L. to continue in the same office until the nativity of the Blessed Virgin Mary, which should be A. D. 1639, if he should so long live, and from thence until one other of the same company should be chosen and named unto the office of master of the said company and corporation in due manner, according to the ordinances and provisions thereafter in the said letters patent expressed and mentioned, unless he should in the mean time, upon just cause be removed from his said office of master: And also the said late lord the king, by the said letters patent, for himself, his heirs and successors, did assign, name, constitute, create, and make his well beloved Edward Read, John Blackman, Thomas Leigh, and John East, to be the first and the present Wardens of the said company and corporation, to continue in the said office of wardens until the said feast of the nativity of the Blessed Virgin Mary, which should be in the same year of Our Lord God 1639, if they the said Edward R. John B. T. L. and J. E. should respectively so long live, and should not for some just cause in the mean time be lawfully removed from their offices, and from thence until four others of the said company and corporation should be chosen into the said office of wardens of the said company and corporation, according to the ordinances and provisions in the said letters patent expressed and declared; and the said late lord the king, by the letters patent, for himself, his heirs

and successors, did assign, name, constitute, and make his well beloved Timothy Bridges, Robert Moore, Richard Whitton, George Hamilton, Thomas Morris, James Cadwell, John Lawrence, John Green, A. G. esq. W. Y. J. B. P. B. T. L. R. B. and V. E. glovers, to be the first and then present assistants in the company and corporation, to continue in the said offices of assistants during their natural lives respectively, saving such of them as for misbehaving him or themselves in their said office, or for some other reasonable and lawful cause should be removed; and also that the said William S. E. R. J. B. T. L. and J. E. from and after such time as they or any or either should leave or be removed from the said several offices, should, during their respective lives, be assistants of the said company and corporation, saving such of them as for misbehaving themselves in the said offices, or other reasonable and lawful cause which should be removed from the said office of assistants; and the said late king's will and pleasure was, and he did by the said letters patent authorise and appoint, that the said first and then present master and wardens by the said late king nominated as aforesaid should every of them respectively take their corporal oaths before some one of the masters of the said late king's high court of chancery, well and truly to execute their said several and respective offices of master and wardens, according to the true meaning of the said letters patent, before he or they should take upon them the exercise or execution of their said offices or places, to any of which the said master of the chancery of the said late king did by his said letters patent give power and authority to administer the said oath and oaths accordingly; and that the said master and wardens so being sworn, the said master and two or more of the said wardens should have power and authority, by virtue of the said letters patent, to give unto all and every the persons aforesaid named to be the first assistants their corporal oath, well and truly to execute their said offices, according to the true meaning of the said letters patent, before the said assistants should take upon them the exercise or execution of their said places of assistants, as by the said letters patent, relation being thereto had, will (amongst other things) more fully and at large appear, which said letters patent the said master, wardens, assistants, and fellowship afterwards, to wit, on the said tenth of December, in the fourteenth year of the reign of the said late king, at L. aforesaid, *i. e.* in the parish of St. Mary-le-bow, in the ward of Cheap, accepted: And the said master, wardens, assistants, and fellowship further say, that after the granting of the said letters patent and acceptance thereof as aforesaid, to wit, on the seventeenth of March, in the thirty-third year of the reign of Charles the Second, late king of England, &c. at the then place or meeting of the said master, wardens, and fellowship, situate in L. aforesaid, the then master, wardens, assistants, and fellowship of the said company duly met and assembled themselves together, to treat, consult, and determine of and concerning certain ordinances for the good order and government of the said company, being then and there so met

together

together and assembled, the said master, wardens, assistants, and fellowship of the said company (whereof the said then master and two of the said then wardens were three) did then and there, according to the powers granted to them by the said letters patent, and by force of the same, for the good order and government of the said company, make, ordain, constitute, appoint, and set down certain ordinances in writing, by one of which said ordinances it was (amongst other things) ordained, that every person that should be elected or chosen a steward of the company, being a member of the said company (there being four yearly chosen by the master, wardens, and assistants into the office of stewards, who were to make a feast or dinner, with wine, music, and attendants, upon the lord mayor's day, as was accustomed by several other companies, and to receive their reasonable bill of fare to be provided on such occasion from the said master, wardens, and assistants), being so chosen, should refuse to take upon him and hold the said office, he should for his refusal and contempt therein forfeit and pay to the use of the said company the sum of ten pounds of lawful English money, unless the person chosen to the said office of steward should take his corporal oath before the lord mayor of the said city of L. for the time being, that he was not worth, in clear estate, one hundred pounds, in which case, the person that should take the said oath should be excused for that present year from holding the said office of steward, which said ordinance and the said fine therein mentioned, being reasonable, and not repugnant or contrary to the laws or statutes of the realm, nor to the king's prerogative royal, nor to any of the customs or usages of the city of L. afterwards, to wit, on the said seventeenth of March, A. D. 1680, at L. aforesaid (were amongst other things), allowed and approved by the right honourable Henry earl of Nottingham, then lord high chancellor of England, sir Francis Pemberton, then lord chief justice of the court of his said late majesty king Charles the Second, before the said king himself, sir Francis North, knight, then lord chief justice of the court of common pleas of his said late majesty king Charles the Second, according to the form of the statute in such case lately made and provided; of all which said premises the said John Beavitt afterwards, to wit, on the eighth of September, A. D. 1785, at L. aforesaid, in the parish and ward aforesaid, had notice: And the said master, wardens, assistants, and fellowship further say, that after wards, to wit, on the said eighth of September, A. D. 1785, a meeting of the said master, wardens, and assistants (whereof the master and two wardens were three) was in due manner holden at the usual place of the said company, to wit, at a certain house, known by the name of the George and Vulture, situate in Cornhill, in L. aforesaid, in the parish and ward aforesaid, for the yearly election of four stewards (amongst other things), according to the form of the said bye-law, at which meeting so holden aforesaid, the said John Beavitt, then being a member of the said company, and a fit and proper person in that behalf, was by the major part of the then master, wardens, and assistants of

the said company, so assembled as last aforesaid (whereof the master and wardens were three), duly chosen and named to be one of the stewards of the said company for the year then next ensuing, of which said election and nomination he the said J. Beavitt afterwards, to wit, on the twenty-sixth of September, in the year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice, and was then and there duly required to take upon him and execute the said place and office of one of the stewards of the said company for the year then next ensuing, which the said John Beavitt did then and there wholly refuse, and from thence hitherto hath refused to do, to wit, at L. aforesaid in the parish and ward aforesaid; and the said master, wardens, assistants, and fellowship in fact say, that the said John Beavitt did not at any time whatsoever take his corporal oath before the lord mayor of the said city of L. for the time being, that he was not worth, in clear estate, one hundred pounds, to wit, at L. aforesaid, in the parish and ward aforesaid by means whereof the said John Beavitt hath forfeited to the said master, wardens, assistants, and fellowship for such his refusal and offence, the sum of ten pounds; whereby an action hath accrued to the said master, wardens, and fell whipp to have of and from the said John Beavitt the said ten pounds so forfeited and above demanded: Yet the said John Beavitt, although often requested, hath not as yet rendered the said ten pounds above demanded, or any part thereof, to the said master, wardens, assistants, and fellowship, or to any or either, but to render the same, or any part thereof to the said master, wardens, assistants, and fellowship, or to any or either of them, hath hitherto wholly refused and still refuses so to do, to the damage of the said master, wardens, assistants, and fellowship; and therefore they bring their suit, &c.

Declaration by
the butcher's
company, a-
gainst defendant
for keeping open
his shop and ex-
posing meat to
sale on a Sunday,
contrary to a
law made by the
company.

LONDON, to wit. J. M. Ite of, &c. was summoned to answer the masters, wardens, and commonalty of the art or mystery of butchers, of the city of London, of a plea that he render, &c.; and whereupon, &c.; for that whereas our late sovereign lord George the second, by the grace of God, &c. by his letters patent, sealed with the great seal of Great Britain, bearing date at Westminster, in the county of Middlesex, the tenth day of October, which was in the twenty-third year of the reign of his said late majesty, after reciting as therein is recited, did of his special grace, certain knowledge, and mere motion for him, his heirs, and successors, with certain constituents, declare, and grant that all and singular freemen of the society of the art or mystery of butchers, of the said city of London, and every other person or persons who then used or exercised, or should thereafter use or exercise the art or mystery of butchers within the city of London, the liberties and suburbs thereof, and within any other place or places whatsoever, within the space of two miles from the city of London, by whatsoever name or names such society was called or known, and their successors for ever thereafter might and should be

be by virtue of the said letters patent one body corporate and politic, by the name of the master, &c. did, by the said letters patent, make, ordain, constitute, and declare them really and fully, and in name and in fact one body corporate and politic, by the name of the master, &c. &c.; and that they their successors, by the names of the master, &c. might and should be for ever thereafter fit and capable persons in law to hold, purchase, receive and possess manors, messuages, lands, tenements, liberties, privileges, jurisdictions, franchises, and hereditaments whatsoever, and for what kind or nature soever to them and their successors, in fee and for ever, and for a term of a year or years, or otherwise howsoever, and also goods and chattels, and all other matters whatever, of what nature, kind, or quality soever; and also to grant, demise, alien, assign, and dispose of manors, lands, tenements, and hereditaments, and to do and execute all and singular other matters and things by such name; and that by such name of master, &c. they might plead and be impleaded, answer and be answered, defend and be defended in whatsoever place or places, and before whomsoever the judges or justices, and other persons and officers of his said majesty, and his heirs, and successors, in all singular actions, pleas, suits, quarrels, causes, matters, and demands whatsoever, and of whatsoever kind or quality they might or should be, in the same manner and form as any other of our liege men of this his kingdom were fit persons and capable in law, or as any body corporate or politic within his kingdom of Great Britain might have, purchase, receive, possess, and enjoy, grant, demise, alien, assign, and dispose, plead and be impleaded, answer and be answered, defend and be defended, do, permit, or execute: And that the said masters, wardens, and commonalty of the art or mystery of butchers of the city of London, and their successors, for the future, might have a common seal, to be used in what causes and businesses soever of them and their successors, and that it should and might be lawful for the said master, &c. and their successors, from time to time, at their pleasure to break, change, and make anew such their seal as to them should seem meet: And his said late majesty further wishes, and did by the said letters patent for him, his heirs, and successors, grant to the said master, &c. by the said letters patent incorporated as aforesaid, and to their successors, that there might and should be for ever thereafter one of the freemen of the commonalty of the art or mystery aforesaid, chosen in the manner in the said letters patent thereafter mentioned, who should be named master of the art or mystery of butchers of the city of London, and that in like manner there might and should be five freemen of the commonalty of the art or mystery aforesaid chosen and named in the manner in the said letters patent thereafter mentioned, who should be and be named wardens of the art or mystery of butchers of the city of London; and also that in like manner there might and should be fifteen freemen of the commonalty of the art or mystery aforesaid to be chosen in the manner in the said letters patent after mentioned, who should be

and be named assistants to the said masters and wardens of the art or mystery of butchers of the city of London, and from time to time should be aiding and assisting to the said masters and wardens for the time being, in all causes, matters, and business touching and concerning the said master, wardens, and commonalty; and that it should and might be lawful to and for the said master, wardens, and commonalty of the art or mystery of butchers of the city of London, and their successors, to have, retain, and appoint a certain council house or hall, within the said city of London, or the liberties thereof; and that the said masters, wardens, and assistants for the time being and their successors, or the major part of them, &c. as often as to them it should seem fit and necessary, might at all times thereafter call or keep within the said house or hall, a court or convention of the said master, wardens, assistants, and commonalty, or of the major part of them (of whom his said late majesty willed the said master and two wardens, for the time being, to be three): And that in the said court or convention they might, according to their best judgment, treat, confer, advise, consult, and determine of and concerning the articles, constitutions, and ordinances touching and relating to the said master, wardens, and commonalty, and their good order, state, and government: And his said late majesty further did by the said letters patent, for him, his heirs, and successors, grant to the said master, &c. by the said letters patent, and their successors, incorporated that the master, wardens, and assistants of the said art or mystery for the time being, or the major part of them (of whom his said late majesty willed the master and two wardens, for the time being, to be three), on public notice to be given for a meeting, might and should have full power and authority to appoint, constitute, ordain, and make from time to time such reasonable ordinances, decrees, orders, and constitutions, in writing, which to them, or the major part of them (of whom his said late majesty willed the master and two wardens, for the time being, to be three), according to their best judgment should seem to be good, wholesome, profitable, honest, and necessary for the good order and government of the master, wardens, and commonalty of the said art or mystery of butchers, or of exposing flesh to sale within the said city of London, and within the space of two miles from the said city of London, and for the declaring in what manner and order the said master, wardens, and commonalty, and all and singular persons using the said art or mystery, or exposing flesh to sale within the said city, and within the space of two miles thereof, in their offices, servants, and trades, should behave, bear, and use themselves for the public good and common benefit of the said master, wardens, and commonalty of the said art or mystery aforesaid, and in all other causes and things whatsoever concerning the art or mystery aforesaid: And that the said master, wardens, and assistants of the art or mystery aforesaid, for the time being, or the major part of them (of whom his said late majesty willed the said master and two wardens of the said art or

LONDON KEEPING OPEN SHOP ON SUNDAY.

mystery, for the time being, to be three), as often as they should make, constitute, ordain, and establish such institutions, ordinances, orders, and constitutions, should make, limit, and provide such pains, penalties, and punishments, by imprisonment of the body, or by fines or forfeitures, or by either of them, against and upon all offenders against such laws, statutes, institutions, ordinances, and constitutions, or any or either of them, as to the said master, wardens, and assistants of the art or mystery aforesaid, for the time being, or the major part of them (of whom his said late majesty willed that the master and two wardens of the art or mystery aforesaid, for the time being, should be three) should seem necessary, fit, and requisite for the observation of the said orders, constitutions, ordinances, and institutions: And that the said master, wardens, and commonalty of the art or mystery aforesaid, and their successors, might have, recover, and levy such fines and forfeitures to the use of the said master, wardens, and commonalty, and their successors, without the hindrance of his said late majesty, his heirs, or successors, or of any the officers and servants of his said late majesty, his heirs, or successors, and without any account thereof to be made to his said majesty, his heirs, and successors, all and singular which laws, ordinances, institutions, orders, and constitutions so to be made as aforesaid, his said late majesty willed should be observed under the penalties to be contained therein: Yet so that such institutions, ordinances, orders, and constitutions, imprisonment, fines, and forfeitures be reasonable, and not repugnant, nor contrary to the laws, statutes, customs, or rights of his said late majesty's kingdom of Great Britain; and his said late majesty did also by the said letters patent for him, his heirs, and successors, appoint, name, create, constitute, and make his well-beloved R. M. &c. citizens and butchers of London, to be the five first and then present wardens of the art or mystery of butchers of the city of London, and to be respectively continued in the said office of wardens of the art or mystery aforesaid, from the date of the said letters patent, until the first Monday in the month of September then next following after the date of the said letters patent, if the said R. M. &c. should respectively so long live, and from thenceforth until five other freemen of the art or mystery should be duly elected and chosen into the office of wardens of the art or mystery aforesaid, according to the rules and orders in the said letters patent expressed and declared: And his said late majesty, and by the said letters patent, for him, his heirs, and successors, appoint, name, create, constitute, and make his said majesty's well-beloved W. R. &c. also citizens and butchers of London, to be first and then present assistants to the said master and wardens of the said art or mystery of butchers of the city of London, and to be respectively continued in the said office of assistants to the said masters and wardens of the art or mystery aforesaid, from the date of the said letters patent, until the first Monday in the month of September next following the date of the said letters patent, if the said W. R. &c. should respectively

so long live, and from thenceforth until fifteen freemen of the art or myllery aforesaid, but not exceeding fifteen in the whole, should be duly elected and chosen into the said office of assistants, according to the rules and orders in the said letters patent expressed and declared, as by the said letters patent now brought here into court, reference being thereunto had, more fully appears, which said letters patent the said freemen of the society of the art or myllery of butchers, and the said other persons therein named, and thereby meant to be incorporated, afterwards, to wit, on, &c. in the twenty-third year of the reign of his said late majesty accepted, to wit, at London aforesaid, in the parish and ward aforesaid; and the said master, wardens, and commonalty in fact says, that after the making of the said letters patent, and before the suing out the original writ of the said master, wardens, and commonalty, to wit, on, &c. at, &c. aforesaid, the then master, wardens, and commonalty of the said art or myllery of butchers of the city of London, at a meeting of the master, wardens, and commonalty then and there duly summoned, and held for that purpose, after public notice in that behalf given at the common hall of the said company, did, amongst other rules, orders, constitutions, and ordinances then and there made, constituted, and ordained for the conservation of the good estate and better governing and ordering of the corporation or company, and of all the members thereof, make, constitute, and ordain a certain reasonable rule, order, and ordinance as follows (that is to say): That whereas the Lord's day, commonly called Sunday, was by christians to be kept holy, it was therefore ordained, that no person then using or exercising, or who thereafter should use or exercise the said art or myllery of butchers, and did and should thereafter inhabit and dwell within the said city of London, the liberties or suburbs thereof, or within two miles of the said city, should keep open any shop, or offer or put to sale, or sell any flesh upon the said day, and that every such person who should offend, contrary to any part of that ordinance, should forfeit and pay to the said master, wardens, and commonalty, for the first time, twenty shillings; for the second time, forty shillings; and for every time after the sum of three pounds of lawful money of Great Britain; and it then and there also by the said then master, wardens, and commonalty at such meeting so summoned and held as aforesaid, for the purpose aforesaid, further ordained, that if any member or freeman of the said company, or art or myllery aforesaid, or other person then using and exercising, or who thereafter should use or exercise the art or myllery of a butcher within the city of London, the liberties or suburbs thereof, or within any other place within the space of two miles from the said city of London, did, or should thereafter infringe or break, or did not duly observe any act, order, or ordinance in those orders and ordinances expressed or contained, and should thereby incur any penalty, fine, or forfeiture in the said orders and ordinances contained, and should deny, refuse, or neglect to pay such sum or sums of money as should happen at any time there-

LONDON KEEPING OPEN SHOP ON SUNDAY.

thereafter by him or them to be forfeited, or due to the said master, wardens, and commonalty, for any pain, penalty, or forfeiture, or breach of any of the said acts, orders, or ordinances limited and appointed; that then, and so often it should and might be lawful to and for the said master and wardens of the said art or mystery for the time being, to recover such penalties, fines, forfeitures, sum and sums of money by action of debt, in any of his majesty's courts of record at Westminster, or in any other manner as the law in such cases allowed and directed, according to the true intent and meaning of the said letters patent, which said orders and ordinances afterwards, to wit, on, &c. at, &c. aforesaid, at the desire of the said master, wardens, and commonalty of the said company, and according to the tenor of a certain act of parliament in such case made and provided, by the right honourable lord Hardwicke, lord high chancellor of Great Britain, the right honourable sir William Lee, lord chief justice of his majesty's court of king's bench, and the right honourable sir John Willes, knight, lord chief justice of the court of common pleas, at Westminster, were seen, perused, read, and examined, and by them approved of, ratified, and confirmed, of which said orders and ordinances so made and approved, ratified, and confirmed as aforesaid, the said James Maffey afterwards, and long before the committing of the several offences against the same hereinafter mentioned, to wit, on, &c. at, &c. aforesaid, had notice: And the said master, wardens, and commonalty in fact say, that after the making, approving, ratifying, and confirming the said orders and ordinances, to wit, on, &c. the said J. M. was a person using and exercising the said art or mystery of butchers within the said city of London, to wit, at Aldgate High-street, in the parish of St. Botolph, in the said city, and did also inhabit and dwell within the said city of London, to wit, at, &c.: And the said J. M. to being a person using and exercising the said art or mystery of a butcher, within the said city of London as aforesaid, afterwards, to wit, on, &c. the same day being the Lord's day, commonly called Sunday, did keep open the shop of him the said James, wherein the said James then used and exercised the said art or mystery of butchers, situate in the parish of St. Botolph, &c. and did then and there offer and put to sale flesh upon the said day, contrary to the form and effect of the said order and ordinance in that behalf made as aforesaid, whereby the said James forfeited to the said master, wardens, and commonalty for his said offence, the sum of twenty shillings, which said sum of twenty shillings to by him forfeited as aforesaid, the said J. M. afterwards, to wit, on, &c. in the year aforesaid, at London aforesaid, duly paid to the said master, wardens, and commonalty in discharge of his said forfeiture: And the said master, wardens, and commonalty in fact further say, that the said J. M. afterwards, and after the committing of the said offence of him the said J. M. and after such forfeiture for the same by him incurred as aforesaid, and after such payment in discharge of his said forfeiture by him made as aforesaid,

said, to wit, on, &c. he the said J. M. then being a person using and exercising the said art or mystery of butchers within the said city of London, and then also inhabiting and dwelling within the said city of L. and the said last-mentioned day being the Lord's day, commonly called Sunday, did keep open the said shop of him the said James, wherein he the said James then used and exercised the said art and mystery, situate in the parish, &c. and did then and there in the said shop of him the said James, offer and put to sale flesh, to wit, divers large quantities of beef upon the said last-mentioned day, contrary to the form and effect of the said order and ordinance in that behalf made as aforesaid, and whereby the said James Massey forfeited to the said master, wardens, and commonalty for his said last-mentioned offence, being the second of him the said J. M. the sum of forty shillings, and which said sum of forty shillings the said J. M. afterwards, to wit, on, &c. in the year aforesaid, was duly requested to pay to the said master, wardens, and commonalty, to wit, at London aforesaid; but the said J. M. then and there and always afterwards refused, and neglected so to do, by reason of which said several premises an action hath accrued to the said master, warden, and commonalty to demand and have of and from the said J. M. the said sum of forty shillings; yet, &c.; common conclusion in debt.

In the Sheriff's Court, London.

(a) Declaration in the Sheriff's court of London by the chamberlain of the city against defendant for 600l being his fine for refusing to take upon him the office of Sheriff, to which he had been duly elected.

JOHN WILKES, esquire, chamberlain of the city of London, by A. B. his attorney, demands of John Pardoe, esquire, citizen and haberdasher of London, six hundred pounds, of, &c. which he owes to and unjustly detains from him; for that whereas the city of London is, and from time whereof the memory of man is not to the contrary, hath been an ancient city and county of itself, and the county of Middlesex hath been for all the time aforesaid, and is an ancient county, and the citizens of the said city are and for all the time aforesaid have been a body corporate and politic, by and under divers names, at divers times, and for divers years before and at the time of the making of the act and ordinance hereinafter mentioned, were and now are incorporated by the name of the mayor, commonalty, and citizens of London: And whereas the sheriffalty of the said city of London, and the sheriffalty of the said county of Middlesex are, and for all the time aforesaid have been ancient offices: And whereas within the said city of London there now are, and from time whereof the memory of man is not to the contrary, there have been, and have used and been accustomed to be, and still of right ought to be two sheriffs of the said city of London annually elected, chosen, and appointed, which said two sheriffs of the said city of London jointly are, and continue, and long before the making of the said act and ordinance hereinafter mentioned, to wit, for the space of three hundred years and more before the making thereof, were constituted, and still of right ought to be and constitute one sheriff of the said

(a) See Plea, Replication, Rejoinder to this Declaration, ante 174, 175, 176.

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county of Middlesex; and the said sheriffs of the said city of London for the time being during all the time aforesaid, and hitherto of right have exercised, and still of right ought to exercise as well the said office of sheriffs of the said city of London, as the said office of sheriff of the said county of Middlesex; and whereas by an act and ordinance of common council duly made in a common council of the said city, held according to the custom of the said city, in the chamber of the Guildhall of the said city, situate in the parish of St. Michael Bassishaw in the said city, on, &c. in the twenty-first year of the reign of our sovereign lord George the Second, late king of Great Britain, &c. it was according to the ancient custom of the said city by the authority of the said common council enacted, ordained, and declared that from thenceforth for ever the right of electing persons to the said office of sheriff should be, and the same was thereby vested in the liverymen of the several companies of the said city, to be for that purpose from time to time assembled at a common hall of the said city, held in the Guildhall of the said city, according to the custom of the said city: And that the general day of election of persons to the said offices should be yearly the twenty-fourth day of June unless the same should happen to be Sunday, in which case the said election to be on the day then next following, provided always, and it was by the said act of common council further ordained and enacted, that whensoever it should happen that any person or persons elected to the said office of sheriffalty should in any instance refuse or neglect to conform to the said act, or should depart this life, or should be lawfully removed or discharged from the said offices, or from his or their respective election thereunto, or that upon any other occasion whatsoever there should be just cause to proceed to a new election, then, and in every such case it should and might be lawful to and for the liverymen of the said several companies of the said city duly assembled as aforesaid, to proceed to and make such new election at such day and time as by the court of lord mayor and aldermen of the said city of London for the time being should be ordered and appointed, any thing contained in the said ordinance to the contrary thereof in anywise notwithstanding; and by the said act of common council it was further ordained and enacted, that every person who should be thereafter elected to the said office of sheriff upon the said general election day, or at any other time between the said general election day, and the twenty-second day of September in the same year, when there should be no actual vacancy in the said offices, should take the same upon him on the vigil of St. Michael the Archangel next following his said election, and should hold the same for and during the space of one whole year from thence next ensuing; and it was by the said act of common council further enacted, that from thenceforth for ever it should and might be lawful to and for the lord mayor of the said city for the time being, at such time or times as he should think proper, between the fourteenth of April and the eleventh of June in every year, to nominate in the said court of lord mayor and alderman of the said city,

city, one or more fit and able person or persons (not exceeding the number of nine persons in the whole), being free of the said city to be publicly put in nomination for the said offices of sheriffalty to the liverymen of the several companies of the same city, to be thereafter in the common hall aforesaid assembled for the election of a person or persons to the said offices, and the person or persons so nominated by any lord mayor of the said city should at every such assembly of the said liverymen, after his or their respective nominations by the lord mayor as aforesaid, be publicly put in nomination for the said offices before any other commoner of the said city, and in the same order as he or they should stand nominated by the lord mayor, until he or they should have been respectively duly elected to the said offices, or should have been duly discharged of and from such nomination in such manner as was in the said act and ordinance after mentioned, provided always, and it was by the said act of common council further ordained and enacted, that if any person so nominated by any lord mayor of the said city should, within six days after notice thereof, pay to the chamberlain of the said city, the sum of four hundred pounds *ob.* &c. for the uses thereafter mentioned, and twenty marks towards the maintenance of the ministers of the several prisons within the said city, together with the usual fees, every such person should be and was thereby exempted and discharged from such nomination, and from serving the said offices of sheriffalty unless he should afterwards take upon himself the office of an alderman of the said city, in which case he should be liable to be elected to the said offices of sheriffalty, such payment of the said sums of four hundred pounds and twenty marks notwithstanding; and it was by the said act of common council further ordered and enacted, that no freeman of the said city who should thereafter be elected by the said liverymen as aforesaid, or nominated by any lord mayor of the said city as aforesaid, to or for the said offices of sheriffalty, should be discharged from such election or nomination for insufficiency of wealth, unless he should and voluntarily did take his corporal oath before the said court of lord mayor and aldermen, that he then was not of the value of fifteen thousand pounds in lands, goods, and debts, and also unless six other citizens, freemen of the said city, to be brought by him, and being men of good credit and reputation, such as the said court should approve of, should and did likewise, before the same court, voluntarily testify upon their corporal oaths, that in their conscience they believe the said person so elected by the said liverymen, or so nominated by the lord mayor (as the case should happen to be) had deposed and sworn truly concerning his value as aforesaid; in which case, and so often as the same should happen, the said court of lord mayor and aldermen should and might, at all times thereafter, discharge any person whatsoever, as well of and from any nomination which should have been made of him by any lord mayor of the said city as aforesaid, as of and from any election

which should have been made of him by the liverymen of the several companies of the said city as aforesaid, any thing therein before contained to the contrary thereof in anywise notwithstanding; provided always, and it was by the said act of common council further ordained and enacted, that every person who should be elected to the offices of sheriffalty upon the said general election day, or at any other time between the said general election day and the fourteenth of September in the same year, when there should be no actual vacancy in the said offices, should personally appear before the said court of lord mayor and aldermen in the inner chamber of the Guildhall aforesaid, at the first court there to be holden next after notice of his election, unless such reasonable excuse should then and there be offered on his behalf as the said court should allow; and in case of such excuse allowed, then at such other subsequent court or courts as the said court should appoint, and should then and there become bound to the chamberlain of the said city for the time being, his executors, and administrators, by his bond or obligation in the penal sum of one thousand pounds, with condition thereunder written, or thereupon indorsed, that if he should personally appear on the vigil of St. Michael the Archangel then next following, between the hours of twelve of the clock at noon and three of the clock in the afternoon, in the public assembly of the said Guildhall, in the place where the court of husting was usually holden, and then and there, in the presence of the lord mayor of the said city for the time being, and two of the aldermen for the time being, or in case of the absence of the lord mayor, then in the presence of four of the aldermen of the said city for the time being, take the oath of office then usually taken by the sheriffs of the said city and county of Middlesex, then the said bond or obligation should be void, upon pain that every person so elected who should not appear and become bound as aforesaid, should (if an alderman of the said city, or a commoner, previously nominated by the lord mayor of the said city as aforesaid) forfeit and pay to the uses in the said act of common council mentioned, the sum of six hundred pounds of, &c. or if he should not then be an alderman of the said city, or a commoner so previously nominated by the lord mayor of the said city, the sum of four hundred pounds of, &c. provided always, and it was by the said act of common council further ordained and enacted, that any person who had at any time therefore paid to the chamberlain of the said city for the time being, for the use of the mayor and commonalty, and citizens of the said city, any sum of money to be exempted or discharged from the said offices of sheriffalty, should be and was thereby for ever exempted or discharged from the said offices of sheriffalty, unless such person should at any time thereafter take upon him the office of an alderman of the said city, in which case he should, and was thereby declared to be subject and liable to be elected to the said offices, such payment, or any thing therein contained to the contrary thereof notwithstanding; provided also, and it was by the said

said act of common council further ordained and enacted, that no person who then had, or thereafter should have duly served the said offices of sheriffalty of the said city and county of Middlesex, according to the true intent and meaning of the said act, or of any former act of common council, should thereafter be eligible to the said offices a second time, any thing thereinbefore contained to the contrary thereof notwithstanding; and it was by the said act of common council further ordained and enacted, that all penalties and sums of money to be forfeited by virtue of the said act should be recovered by action of debt, to be commenced and prosecuted in the name of the chamberlain of the said city for the time being, in one of the courts of record of the king's majesty, his heirs, and successors within the same city, as by the said act and ordinance of common council (amongst other things) more fully appears: And the said plaintiff in fact saith, that between the fourteenth of April and the fourth of June, to wit, on, &c. at, &c. N. N. esquire, then mayor of the said city, in pursuance of the before-mentioned act or ordinance of common council, did duly nominate in the said court of the lord mayor and aldermen of the said city, the said defendant then, and from thenceforth hitherto being a commoner and free of the said city of London, and a fit and able person to be publicly put in nomination for the said offices of sheriffalty to the liverymen of the several companies of the said city, to be thereafter in the common hall aforesaid assembled for the election of a person or persons to the said offices; of which said nomination the said defendant afterwards, to wit, on, &c. at, &c. had due notice given unto him, but the said defendant did not, within six days after the said notice so given to him as aforesaid, nor at any other time whatsoever, pay unto the said chamberlain of the said city, for the uses in the aforesaid act or ordinance mentioned, the said sum of four hundred pounds, or any part thereof: And the said plaintiff further saith, that the said defendant, in pursuance of the said act or ordinance of common council, was on, &c. in, &c. and at every assembly of the said liverymen of the said several companies of the said city in the said common hall assembled, for the election of a person or persons in the said office of sheriffalty before that day, and after the said nomination of the said defendant, duly put in nomination to be then and there elected one of the sheriffs of the said city, and one of the persons to be and serve in the said office of sheriff of the said county of Middlesex, but the said defendant was not at any of the said assemblies elected: And the said plaintiff further saith, that at an assembly of the said liverymen of the said several companies of the said city in the said common hall assembled, duly summoned and held according to the said custom of the said city, and in pursuance of the before-mentioned act or ordinance of common council, on, &c. at, &c. for the election of sheriff of the said city, and a sheriff of the said county of Middlesex, one W. C. and one J. B. were then and there duly elected into the said offices of sheriffalty for the year ensuing, to com-

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mence from the vigil of St. Michael the Archangel then next following, whereof due notice was given unto them the said W. C. and J. B.; yet the said J. B. did neglect to give such bond as by the said act or ordinance of common council was required as before mentioned, at the then next and first court of the said lord mayor and aldermen duly held according to the custom of the said city, in the inner chamber of the said Guildhall of the said city, on, &c. in the year last-mentioned, in the parish aforesaid, after his said election and such notice thereof as aforesaid, but then and there appeared and was duly discharged from his said election by the said court, by reason of insufficiency of wealth, in manner and form as is directed by the said act or ordinance of common council in that behalf; whereupon, and in consequence of such discharge, and in pursuance of the said act or ordinance of common council, the said court of lord mayor and aldermen did then and there order and appoint that the said liverymen of the said several companies of the said city of London, should be again summoned to assemble in the said common hall of the said city, by twelve o'clock of the noon on the third day of that instant July, to proceed and make a new election of a fit and able person to be one of the sheriffs of the said city, together with the said W. C. (who had given bond to take upon him the offices pursuant to his said election, and according to the said act or ordinance) sheriff of the said county of Middlesex, in the room of the said J. B. for the said year then next ensuing, to commence from the vigil of St. Michael the Archangel then next following; whereupon at an assembly of the said liverymen of the said several companies of the said city in common hall assembled, duly summoned and held as aforesaid according to the custom of the said city, and in pursuance of the said act or ordinance in the Guildhall of the said city, in the parish aforesaid, on, &c. for the election of a fit and able person to be one of the sheriffs of the said city, together with the said W. C. sheriff of the said county of Middlesex for the year then next ensuing, to commence on the vigil of St. Michael the Archangel then next ensuing, the said defendant then being a fit and able person, and free of the said city, and then not being discharged from the nomination made of him by the said mayor of the said city as aforesaid, nor any otherwise exempted from being elected to be one of the sheriffs of the said city, and one of the persons to be and serve in the said office of the sheriff of the said county of Middlesex, was, according to the before-mentioned act or ordinance of common council, duly put in nomination in order for his being then and there elected to be one of the sheriffs of the said city, and one of the persons to be and serve in the said office of sheriff of the said county of Middlesex for the year then next ensuing, to commence from the vigil of St. Michael the Archangel then next following, if the said liverymen of the said several companies of the said city in common hall then and there assembled should so think fit, at which time and place J. F. esquire and M. B. esquire, then and

there being sheriffs of the said city, and sheriff of the said county of Middlesex, then and there having full right, power, and authority to proceed upon and determine the fact and right of such election, did then and there declare, and so the truth and fact was, that the election of the said liverymen was fallen on the said defendant, then free of the said city; after which, and on the day and year last mentioned, at Guildhall aforesaid, in the parish aforesaid, in the place where the court of hustings was usually held, and in the presence of the right honourable J. B. esquire, then mayor of the said city, and also in the presence of six of the then aldermen of the said city, he the said defendant was then and there justly and truly declared to be duly elected one of the sheriffs of the said city, together with the said W. C. sheriff of the said county of Middlesex, for the year then next ensuing, to commence from the vigil of St. Michael the Archangel then next following, and proclamation thereof was then and there publicly made in the said Guildhall, in the said place where the said court of hustings was usually held, to wit, in the parish aforesaid, in the presence of the said J. B. then being lord mayor as aforesaid; and the said several aldermen and the said defendant was then and there publicly called to come forth and give his consent to take upon him the said office of one of the sheriffs of the said city of London, together with the said W. C. the said office of sheriff of the said county of Middlesex, but the said defendant did not then and there give his consent thereto: And the said plaintiff further saith, that afterwards, and before the holding of the court of the mayor and aldermen hereinafter mentioned, to wit, on, &c. at, &c. the said defendant had due notice given him of his said election; and that afterwards, to wit, on, &c. the next court of the mayor and aldermen of the said city, after the said election of the said defendant, and such notice thereof as aforesaid, was duly held according to the custom of the said city, in the inner chamber of the said Guildhall of the said city, to wit, in the parish aforesaid, and at the same court the said defendant then and there personally appeared, and then and there in the said court of lord mayor and greater part of the then aldermen of the said city, openly declared his refusal, and then and there absolutely refused to take upon himself the said office of one of the sheriffs of the said city, and of one of the persons to be and serve in the said office of sheriff of the said county of Middlesex, pursuant to his said election, and no reasonable excuse whatever was then and there offered by or on the behalf of the said defendant, or allowed of by the said court, and the said defendant then and there also refused to become bound unto the said plaintiff, then and still being chamberlain of the said city, by such bond or obligation as in and by the said act or ordinance of common council before-mentioned was and is in that behalf required (although in the same court a writing purporting to be a proper deed or obligation on that occasion, with such penalty and condition as aforesaid, according to the

the before-mentioned act or ordinance of common council, was then and there ready prepared and duly tendered to the said defendant, to be by him executed; and the said defendant hath hitherto wholly refused and neglected to execute such bond as aforesaid, or to take upon him the said office of one of the sheriffs of the said city, and of one of the persons to be and serve the office of sheriff of the said county of Middlesex, pursuant to his said election, he the said defendant not having at any time taken his corporal oath before the mayor and greater part of the aldermen of the said city, in the open court of the mayor and aldermen of the said city (although divers counts of the mayor and aldermen of the said city have been held after the said nomination and election of him the said defendant as aforesaid, and before the vigil of St. Michael the Archangel next after his said election in the inner chamber of the said Guildhall of the said city, in the parish aforesaid, according to the custom of the said city that he was not of the value of fifteen thousand pounds in lands, goods, and debts, or otherwise discharged himself, according to the laws and ordinances of the said city); by reason of which said premises he the said defendant hath forfeited the sum of six hundred pounds; *per quod actus accrevit*, to the said plaintiff, for being chamberlain of the said city as aforesaid, to require and have of the said defendant the said sum of six hundred pounds; yet, &c.

V. GIBBS.

DEVONSHIRE, to wit. Adam Pierce, gentleman, complains of John Barton being, &c. of a plea that he render to him four pounds of, &c. which he owes to and unjustly detains from him, &c.: for that whereas the city of Exeter now is, and from time whereof the memory of man is not to the contrary, hath been an ancient city and at the time of making the letters-patent hereinafter mentioned was, and from thence hitherto hath been and still is a county of itself, and the citizens of the said city, from time whereof the memory of man is not to the contrary, have been a body corporate and politic in deed, fact, and name, and have at divers times been called and known by various names of incorporations, and at the time of the making of the letters-patent hereinafter mentioned, were, and from thence hitherto have been, and still are a body politic and corporate in deed, fact, and name, by the name of the mayor, bailiffs, and commonalty of the city of Exeter, to wit, at, &c. in, &c. And whereas within the said city, and at the time of the making the letters-patent hereinafter mentioned, there was, and from thence hitherto hath been, a common council, part of the said body corporate and politic, to wit, at, &c. And whereas our sovereign lady Queen Elizabeth, late queen of England, on the twenty-first of February, in the third year of her reign by her letters-patent under the great seal of England, bearing date at Westminster, in the county of Middlesex, the same day and year

Declaration in
debt by the
charter of
the city of Ex-
ter, against de-
fendant, for the
penalty for
breach of a bye-
law, to wit, for
disturbance
even within the
wall of the city.

*Vol. this case
in Cowp. Rep.
269. Easter
Term, 15. Geo.
III.*

aforesaid, did will and for himself, her heirs, and successors, grant to the said mayor, bailiffs, and commonalty of the said city of Exeter, and their successors for ever, that the mayor and twenty-four of the common council of her said city of Exeter, or the greater part of them for the time being, for the better estate and government of her said city of Exeter, might and might be able from time to time for ever, at their pleasure to ordain, make, and constitute acts, ordinances, statutes, and provisos, for the common benefit of the said county or city, and the inhabitants thereof, and alter, change, and reform the same, provided that such laws, ordinances, and statutes, or any of them, were not contrary to the laws and ordinances of this kingdom, as by the said letters-patent remaining of record in his majesty's high court of chancery at Westminster (among other things) may more fully appear; which said letters-patent the said mayor, bailiffs, and commonalty of the city of Exeter aforesaid, to wit, on, &c. in the third year of the reign of the said late queen Elizabeth, accepted, that is to say, at, &c. in, &c.: And the said Adam further says, that the said mayor and greater part of the common council assembled, afterwards, to wit, on, &c. 1772, by virtue of the said letters-patent, did ordain, make, and constitute, a certain act or ordinance for the common benefit of the said county or city of Exeter; whereby reciting, that divers great nuisances had arisen in the said city by reason of slaughtering beasts and keeping hogs within the walls thereof, whereby many noisome smells had arisen, so that the air had been infected, and many putrid fevers and pestilential disorders had arisen, and were likely thereafter to arise to the endangering the health and lives of her majesty's liege subjects inhabiting the said city, if some timely remedy were not applied thereto; it was constituted, appointed, and ordained, that from and after the feast of St. John the Baptist then next ensuing, no butcher or other person should, within the walls of the said city, slaughter any beast upon pain to forfeit for every bull, cow, ox, or heifer, so slaughtered as aforesaid, the sum of forty shillings, and for every beast so slaughtered as aforesaid, the sum of twenty shillings, and that no butcher or other person should keep any wine within the walls of the said city, nor any stinking filth, garbage, or annoyance within his house, curtilage, or back side, upon pain to pay for every time such butcher or other person should so offend, the sum of five pounds; all which penalties and forfeitures were, by the authorities last-mentioned, constituted, directed, or appointed to be recovered by the said chamberlain of the said city of Exeter for the time being, by action of debt, to wit, at, &c.; of which said act or ordinance the said John afterwards, to wit, on, &c. at, &c. had notice: And the said Adam further says, that after the making the said act or ordinance, and after the feast of St. John the Baptist then next ensuing the time of the making the said act or ordinance, to wit, on, &c. the said John did slaughter two oxen within the walls of the said city, to wit, at, &c. contrary to the form and effect of the said act or ordinance aforesaid, whereby an action

hath

hath accrued to the said Adam, as chamberlain of the said city of Exeter, to demand and have of and from the said John the said sum of four pounds above demanded; yet, &c. (common conclusion in debt.)

There was a general demurrer to this declaration, which was argued by Cowper for defendant; and Glynn, serjeant, for plaintiff, in Easter Term, 15. Geo. 8. and judgment for plaintiff.

SURRY, to wit. R. W. and P. S. chamberlains of the town of Kingston upon Thames, in the county of S. complain of N. P. being in the custody of, &c. of a plea that he render to the said R. and P. ten pounds of lawful, &c. which he owes to and unjustly detains from them, &c.: for that whereas the town of K. aforesaid, in the county of S. now is, and from time whereof the memory of man is not to the contrary, hath been an ancient town incorporated, and hath been during all that time situate within the manor of K. in the same county: And whereas the freemen of the said town, for all the time aforesaid until the granting and acceptance of the letters-patent hereinafter next mentioned, were a body corporate and politic in deed, fact, and name, by the name of the freemen of the town of Kingston upon Thames, to wit, at the town of Kingston upon Thames aforesaid: And whereas the late king Edward the Fourth, late king of England, on, &c. in the twentieth year of, &c. by his letters patent under his great seal of England, bearing date at Westminster the day and year aforesaid (which said letters-patent, sealed with the great seal of England, the said R. and P. now bring here into court, the date whereof is the day and year aforesaid) for himself and his heirs, granted and confirmed to the then freemen of the town of Kingston aforesaid, that they should be one body in deed and name, and one perpetual corporate community of two bailiffs of the said town, and men of the said town, and should have perpetual succession, and that they and their successors, by the name of the bailiffs and freemen of the town of Kingston upon Thames, in the county of S. should be named, known, and called, and by those names should plead and be impleaded, answer and be answered in whatsoever courts of the said late king and his heirs, and of others whomsoever, as by the same letters-patent (among other things) doth more fully appear; which said letters-patent the said then freemen of the said town afterwards, to wit, on, &c. at, &c. duly accepted: And whereas the freemen of the said town of Kingston upon Thames, in the said county, from time whereof, &c. until the said granting and acceptance of the letters-patent hereinbefore mentioned, and the said bailiffs and freemen of the said town from thence hitherto have been, and still are seized of the said manor of Kingston upon Thames in their demesne as of fee, and in respect thereof during all that time have had and held, and have been used and accustomed to have and hold, and still

Declaration
the suit of the
chamberlains of
the town of
Kingston, for
the penalty in a
bye law incur-
red by defend-
ant's refusing
the office of ale-
conner, to which
he had been
elected accord-
ing to an an-
cient custom.

still of right ought to have and hold a court of leet and view of frankpledge of all the inhabitants and residents within the said town of Kingston upon Thames, at and within the Guildhall of the said town, on the Sunday next before and immediately preceding the feast of St. Michael in each year, as belonging and appertaining to the said town: And whereas also during all the time aforesaid, there have been and are as yet divers freeholders or free tenants of and within the said manor of K. aforesaid, and two of such freeholders or free tenants have during all that time been, and of right ought to have been, and still of right ought to be aleconners or headboroughs of the said town, and have during all that time been, and still of right ought to be elected and chosen into the office of aleconners or headboroughs of the said town in manner hereinafter mentioned, to wit, at the town of K. aforesaid: And whereas certain of the freemen, being fifteen in number, have during all the time aforesaid been, and of right ought to have been, and still of right ought to be denominated and called the fifteen, to wit, at the town of K. aforesaid: And whereas also there now is, and during all the time aforesaid hath been, a certain reasonable and laudable custom used and approved of within the said town of Kingston aforesaid, that is to say, that the freemen of the said town for the time being, during all the time aforesaid until the granting and acceptance of the letters-patent hereinbefore mentioned, and from that time hitherto the bailiffs and freemen of the said town for the time being, or so many of them as would be present, have during all the time aforesaid met and assembled, and of right ought to have met and assembled, and still of right ought to meet and assemble together at and in the Guildhall of the said town, at the said court leet so there holden as aforesaid, on, &c. in every year for the consulting about and transacting of the lawful and necessary affairs concerning the said town: And whereas also there now is, and during all the time aforesaid there hath been a certain other reasonable and laudable custom used and approved of within the said town of K. upon T. aforesaid, that is to say, that the said freemen of the said town for the time being, during all the time aforesaid, until the granting and acceptance of the letters-patent hereinbefore mentioned, and from that time hitherto the said bailiffs and freemen of the said town for the time being, or so many of them as would be present, being so met and assembled as aforesaid, at and in the Guildhall of the said town, at the said court so there holden as aforesaid, on Sunday next, &c. in every year, the said bailiffs and the said freemen, or the greatest part of them there then present, exclusive of the said part of the said freemen called the fifteen, have then and there elected and chosen, and have been used and accustomed to elect and chuse, and of right to have elected and chosen, and still of right ought to elect and chuse from and out of the said freeholders or free tenants of the said manor of K. upon T. two fit and proper persons to be and become aleconners or headboroughs of the said town, for the space of one year then next following,

lowing, such two persons being for that purpose first nominated and presented to the said bailiffs and freemen as fit and proper to serve that office by the major part of that part of the said freemen called the fifteens; and the said two persons so elected and chosen to be and become such aleconners or headboroughs as aforesaid, during all the time aforesaid, have been sworn and admitted into the same office, and being so elected and chosen as aforesaid, and sworn and admitted as aforesaid, have thereby during all the time aforesaid, been and become freemen of the said town, and have from thenceforth had, enjoyed, used, and exercised, and of right ought to have had, enjoyed, used, and exercised, and still of right ought to have, use, enjoy, and exercise, as well the said office of aleconners or headboroughs, as of freemen of the said town, and all the rights, liberties, privileges, and franchises thereunto belonging and appertaining. for the space of one year then next following, or until they should severally die or resign, or be discharged or removed from the said office: And whereas the late king Charles the Second, late king of England, on, &c. in the fourth year of, &c. by his letters-patent under his privy seal, bearing date at Westminster in the day and year last aforesaid (which said last-mentioned letters patent, sealed with the said privy seal of the said late king Charles the Second, the said R. and P. now bring here into court, the date whereof is the day and year last aforesaid), reciting (among other things) that by usage and custom in the aforesaid town of K. upon T. aforesaid, for a long time hitherto continued and approved, there had been had and observed a certain constant and undoubted manner in electing, continuing, and removing the bailiffs of the same town and other officers there, together with all circumstances of time, place, and other formalities to such elections customary and belonging, as well in the yearly choice of such officers every year renewed and to be renewed, as in the case of amotion or death of any or either of them, when they should happen, the said king Charles the Second, for himself, his heirs and successors, did approve, satisfy, and confirm by his said letters patent to the aforesaid bailiffs and freemen of the same town and their successors, such usage and custom in choosing and continuing, and removing the officers of the aforesaid town of K. upon T. in manner and form there by the usage aforesaid continued, as by the same letters patent (among other things) doth more fully appear, which said last-mentioned letters-patent the said bailiffs and freemen of the said town for the time being, afterwards, to wit, on, &c. at, &c. duly accepted: And whereas after the granting and acceptance of the said several letters-patent hereinbefore mentioned, to wit, on, &c. the then bailiffs and freemen of the said town for the time being, or so many of them as chose to be present, being duly assembled at a corporate meeting for that purpose held at the Guildhall of the said town, on a public summons thereof previously made, did in due manner, make, and constitute a certain lawful and reasonable bye law, ordinance, whereby it was (among other things) ordered, that every person who should refuse to serve the office of an aleconner or headborough

in the said town should forfeit and pay the sum of ten pounds, to be paid to the chamberlain of the said town for the use of the said corporation, as by the said bye law or ordinance doth more fully appear: And the said Richard and Peter further say, that after the granting and acceptance of the said several letters patent hereinbefore mentioned, and after the making of the said bye law or ordinance hereinbefore mentioned, and after the said N. P. became and was such freeholder or free tenant of and within the said manor as hereinafter mentioned, and before such neglect and refusal of the said N. P. as hereinafter mentioned, to wit, on the Sunday next, &c. A. D. 1783, a court leet or view of frank pledge of the town aforesaid was in due manner held at and within the Guildhall of the said town, before A. B. &c. before the holding of which court public notice of the time and place of holding the said court was in due manner previously given within the said town, at which said court the then bailiffs, and so many of the freemen of the said town as then and there chose to be present, duly met and assembled together at and in the Guildhall of the said town; and the said bailiffs and such of the said freemen as is last-mentioned being so met and assembled as aforesaid, the said then bailiffs and the greatest part of the said then freemen (exclusive of the said part of the said freemen called the fiftens) did then and there, to wit, at the said court leet so holden at and in the said Guildhall as aforesaid, on the Sunday next, &c. in the year of Our Lord 1783, in due manner elect and chuse from and out of the freeholders or free tenants of the said manor of K. upon T. the said R. P. and one J. F. to be aleconners or headboroughs of the said town for the space of one year then next following (the said R. P. and J. F. being for that purpose first nominated and presented to the said bailiffs and freemen as fit and proper persons to serve that office, by the major part of that part of the said freemen called the fiftens, and the said R. and J. then and long before, and from thence hitherto being freeholders or free tenants, and each of them during all that time being a freeholder or free tenant of the said manor of K. upon T.), of which said election the said R. and J. and each of them then and there had notice, and were and each of them was then and there requested to be sworn and admitted into the same office, and to accept and take upon himself the execution, which the said R. P. then and there wholly refused, and still doth refuse to do, contrary to the form and effect of the said bye law or ordinance; by reason whereof, and by force of the bye law or ordinance hereinbefore mentioned, the said R. hath forfeited to the said R. and P. as such chamberlain as aforesaid (they the said R. and P. at the time of such neglect and refusal of the R. as is hereinbefore mentioned being chamberlain of the said town of K. upon T.) the sum of ten pounds, for the use of the corporation aforesaid; whereby an action hath accrued to the said R. and P. to demand and have of the said R. for the use of the said corporation, the said sum of ten pounds above demanded: Yet, &c. [common conclusion in debt.]

Mr. Lambe, who prepared this draft, made the following queries: and

1st, Whether the manor had been immemorially in the corporation?—Answer. It was granted to them by a charter of king John, *quod vide*.

2d, Whether the plaintiffs are chamberlain or chamberlains?—Answer. The bye law is in the singular number.

3d, Whether any person had been chosen aleconner who refused out of the town?—Answer. Yes.

4th, If king Charles's patent was confirmed under the great seal?—Answer. Cannot tell.

5th, Whether a resignation was or could be accepted?—Answer. Never was a resignation.

6th, What officer summoned the hall fifth March 1767?—Answer. The hall-keeper, who is since dead.

7th, Has any similar action been brought?—Answer. Never; the persons refusing to serve have been fined and paid the fine.

8th, Whether the plaintiffs were

chamberlains the day the defendant was chosen?—Answer. Yes,

9th, Are the several officers mentioned in any one of the charters?—Answer. No.

10th, Have the fifteen a voice at the court, after they have delivered their return?—Answer. No.

N. B. The bye laws has not been under the corporation seal.

Mr. Chambre, before whom the declaration was afterwards laid, but who did not settle it, concurred with Mr. L. in opinion, that the power of making bye laws resting in the whole corporate body, and not in any select number of individuals, ought to be exercised by an instrument under the corporation seal; they also thought the bye law too general, inasmuch as the terms of it comprehended strangers as well as members of the corporation and tenants of the manor; and therefore advised the corporation to make a new bye law under the common seal, which should describe the persons who by usage are liable to serve.

SURRY, to wit. The bailiffs and freemen of the town of Kingston upon Thames, in the county of Surry, complain of J. P. being, &c. of a plea that he render unto them forty shillings of lawful, &c. which he owes to and unjustly detains from them, &c.; for that whereas the town of K. upon T. aforesaid now is, and from time whereof the memory of man is not to the contrary, hath been an ancient town incorporated, and the inhabitants and freemen of the said town for all the time aforesaid until the twentieth day of February, in the twentieth year of king Edward the Fourth, late king of England, &c. was one body politic and corporate in fact, deed, and name, by the name of the freemen of the town of K. on which said twenty-sixth day of February, in the same twentieth year of the said late king Edward the Fourth, the same king Edward the Fourth, by his letters patent under his great seal of England, bearing date at Westminster the same day and year aforesaid (and which said letters patent, sealed with the late king's seal of England, they the said bailiffs and freemen now bring here into court), for himself and his heirs and successors, granted and confirmed to the freemen of the said town of K. aforesaid, that they should be one body in deed and name, and one perpetual corporate community of two bailiffs of the said town, and men of the said town, and should have perpetual succession, and that they and their successors by the names of the bailiffs and freemen of the town of K. upon T. in the county of S. should be known, named, and called, and by those names should plead and be impleaded, answer and be answered in all courts whatsoever of the said late king and his heirs, and

Declaration at the suit of the corporation of the town of K. for the penalty in a bye law, incurred by defendant exercising a trade within the town, not being an allowed freeman, contrary to a prohibitory custom, 2d Count, on a mutatus

and others whomsoever, as by the same letters patent may, among other things, more fully appear: And the said bailiffs and freemen further say, that within the said town there is, and during all the said time, whereof the memory of, &c. there hath been an ancient and laudable custom there used, obtained, and approved of, that it should not be lawful for any person whatsoever, not being a freeman of the said town, to use, occupy, or exercise publicly within the same town any mystery, art, or manual occupation in the same town for all the time aforesaid used, and also there now is, and during all the time aforesaid there hath been in the said town a certain other custom there used and approved, that is to say, that if any customs obtained and approved of within the same town were or should be difficult or defective, or there should otherwise, in the said town, arise or happen any new emergencies, wanting remedy or amendment, and not before remedied, that then the freemen of the aforesaid town, and the bailiffs and freemen of the aforesaid town respectively for the time being, at their common assembly held in the said town, for all the time aforesaid have applied and might and may apply a fit remedy for the commonalty of the freemen of the said town, and of other persons assembling there by their ordinance in that behalf, when, &c. as often as should seem expedient to them, so that such ordinance be consonant to truth and reason, and not in the least prejudicial to the king's majesty or his said people, nor in any manner contrary to the statutes and laws of the realm of England: And whereas also at a common assembly of the bailiffs and freemen of the town aforesaid, held according to the custom of the said court at the Guildhall of the same town within the town aforesaid, on the twenty-eighth of March, in the eleventh year of the reign of the said Charles the First late king of England, &c. J. W. and R. C. then being bailiffs of the same town, it was by the same bailiffs and freemen of the town of K. upon T. aforesaid, according to the custom of the aforesaid town, ordered, that if any person or persons should keep any shop or shops, or utter, or offer to utter or sell by retail any wares or merchandizes whatsoever within the said town, or should use or set up any trade, mystery, science, or occupation within the said town, not being first made or allowed a freeman of the same town, unless the same should be on the fair days, that then every such person and persons so offending should forfeit and pay for every such offence six shillings and eightpence, and should also forfeit and pay for every market day within the same town on which he should continue so offending six shillings and eightpence, to the use of the bailiffs and freemen of the said town and their successors, provided always that it should be lawful for all manner of persons that should sell victuals upon the market days of the said town to bring thither their victuals, and there to sell and utter the same in open market, as accustomedly has been used and not otherwise, which said ordinance was amongst others duly made in writing, and afterwards often and publicly at the town of K. aforesaid published and divulged, and of which same ordinance,

ordinance, so made as aforesaid, he the said J. P. afterwards, to wit, on, &c. at, &c. had notice; nevertheless the said J. P. who is not nor ever was a freeman of the aforesaid town, but a foreigner and a stranger to the liberties and privileges of the said town, and who never served or was educated as an apprentice in the said town, nor was in any manner made or allowed a freeman of the said town after he had sufficient notice of the aforesaid ordinance, to wit, on, &c. A. D. 1781, at in the said town of K. upon T. aforesaid, set up, used, and occupied the art, mystery, and manual occupation of a hofier, dealer, and chapman, and then and there in the said town held and kept an open shop, and in his said shop by retail offered to sell and utter, and did sell and utter by retail divers goods and merchandizes in his aforesaid mystery, art, and occupation openly and publicly, against the form and effect of the aforesaid ordinance and custom, and the liberties and privileges of the town of K. upon T. aforesaid, the said art, mystery, or occupation of a hofier, dealer, and chapman then and during all the time aforesaid being an art, mystery, or manual occupation in the same town used and occupied, and the said day of his the said J. P.'s using and occupying of the said mystery, art, or occupation and keeping of his said shop, and of his selling his said goods and merchandizes as aforesaid, not being a day of any fair or market within the same town; whereby an action hath accrued to the aforesaid bailiffs and freemen of the town of K. upon T. aforesaid, to demand and have of the aforesaid J. P. six shillings and eightpence, parcel of the said forty shillings above demanded: And whereas the said J. P. afterwards, to wit, on, &c. at, &c. borrowed, &c. [Count on a *mutatus* for thirty-three shillings and fourpence, residue of the said forty shillings, with common conclusion in debt]; to the said bailiffs and freemen their damage of ten pounds, &c.

JAMES MINGAY.

And the said J. P. by C. G. his attorney, comes and defends the wrong and injury, when, &c. and as to thirty-three shillings and fourpence in the second Count of the declaration mentioned, parcel of the sum of forty shillings above demanded, says, that he doth not owe to the said bailiffs and freemen the said sum of thirty-three shillings and fourpence, or any part thereof, in manner and form as the said bailiffs and freemen have above thereof complained against him; and of this he puts himself upon the country, and the said bailiffs and freemen do the like, &c.: And as to the sum of six shillings and eightpence in the first Count of the declaration mentioned, residue of the said sum of forty shillings, the said Joseph says, that the said first Count in the aforesaid declaration, and the matters therein contained, are not sufficient in law for the said bailiffs and freemen to have their aforesaid action thereof maintained against him the said Joseph, to which said first Count of the aforesaid declaration, in manner and form as the same is above made and set forth, ne the said J. P. is not under any necessity, nor in any wise bound by the law of the land to answer; and

Demurrer to the last declaration, to the 1st Count, for that the count being in restraint of trade and without limits, is void, and the bye law not conformable to it.

* With causes.

this he is ready to verify; wherefore, for want of a sufficient declaration in this behalf, the said Joseph prays judgment that the said bailiffs and freemen may be barred from having their aforesaid action thereof maintained against him, &c.: And for causes of demurrer in law, according to the form of the statute in such case made and provided, the said Joseph sets down and shews to the court here the causes following, to wit, for that the custom in the said first Count alledged, that it should not be lawful for any person whatsoever, not being a freeman of the said town, to use, occupy, or exercise publicly within the same town any mystery, art, or manual occupation in the same town, being in restraint of trade, arts, and manufactures generally, and without restriction or limitation is void in law: And for that the ordinance in the said Count mentioned (supposing the respective customs in that Count set forth to exist, and to be good and lawful customs) is not warranted by, nor doth it pursue the customs in that Count mentioned, or either of them; nor is the said ordinance warranted by those customs, or by either of them: And for that the said ordinance is contrary to the law and customs of this realm, and is void in law: And for that the said first Count of the declaration aforesaid is in other respects uncertain, insufficient, and wants form, &c.

J. MORGAN.

Plaintiffs joined in demurrer, which following.—Judgment for the plaintiffs came on to be argued in Easter Term.

Declaration at the suit of the plumbers company, for penalties incurred by defendant (a freeman) not paying his quarterage to the company on a bye law. LONDON, to wit. The master, wardens, and commonalty of freemen of the mystery of plumbers of the city of London, complain of J. L. being, &c. of a plea that the said J. L. render to the said master, wardens, and commonalty seventeen pounds six shillings and eightpence of lawful, &c. which he owes to and unjustly detains from them, &c.; for that whereas our late sovereign lord James the First, by his letters-patent sealed with the great seal of England, bearing date at Westminster, the twelfth day of April, in the ninth year of his reign, which said letters-patent the said master, wardens, and commonalty now bring here into court, the date whereof is the day and year aforesaid, did at the humble petition of the society of plumbers of London, which said society then was, and had been an ancient society of his special grace and of his certain knowledge and mere motion, for himself, his heirs and successors, did will, ordain, constitute, declare, and grant, that all and singular the freemen of the society of plumbers of London aforesaid, from thenceforth for ever, for the better order, rule, and government of the men of the mystery and society aforesaid, and of all and every of them, which then exercised and used, or thereafter should exercise and use the art and mystery of a plumber, or any stuff, work, merchandizes, or things whatsoever, concerning the said mystery, and for the profit, commodity, and relief of the good and honest, and the terror and correction of the evil, deceitful, and dishonest, should be, in nature, deed, and name, one corporate and politic body, by the master, wardens, and commonalty of freemen

men of the mystery of plumbers of the city of London, and them by the name of master, wardens, and commonalty of freemen of the mystery of plumbers of the city of L. one corporate and politic body in kind, deed, and name, his said late majesty did establish, and to the full, for himself, his heirs and successors, erect, create, make, ordain, constitute, and declare by the said letters-patent, and that by the same name they should have succession for ever, and that by the name of master, wardens, and commonalty of freemen of the mystery of plumbers of the city of London, they should and might have power to plead and be impleaded, answer and be answered, defend and be defended in any courts and places, and before any judges and justices, and other persons and officers of the said king and of his heirs and successors, in all and singular actions, pleas, suits, quarrels, causes, matters, and demands whatsoever, of what nature, kind, or quality soever they were or should be of, in the same manner and form as any other of his said majesty's liege subjects, or of his realm of England were able persons and in law capable, or any other corporate or politic body within his realm of England had power or might plead and be impleaded, answer and be answered, defend and be defended; and his said late majesty did further will, and for himself, his heirs and successors, grant to the aforesaid master, &c. of freemen of the mystery of plumbers of the city of L. aforesaid, and their successors, that from thenceforth for ever there should be one of the commonalty of the art or mystery aforesaid in form in those letters patent mentioned, elected and chosen, who should be and should be named master of the aforesaid mystery of plumbers of the city of London aforesaid, and that likewise there should be two of the commonalty of the same mystery of, &c. of the city of L. aforesaid, in form in those letters patent mentioned, elected and nominated, and which should be and should be named wardens of the mystery of, &c.; and that it should be lawful for the said master, wardens, and commonalty of freemen of the mystery of, &c. and their successors, to have, retain, and appoint one house a house of council within his said majesty's said city of L. aforesaid, or the liberties thereof; and that the same master, &c. for the time being and their successors, or any six of them at the least (whereof he willed the after master and wardens to be three, or the master and one of the wardens for the time being always to be two) should and might at all times thereafter, and from time to time when to them it should seem meet and necessary, call together and hold in the same house and hall a court or convocation of the same master, &c. or of any six of them at the least, whereof he willed the aforesaid master and wardens to be three or, &c.; and in the same court or convocation that they might treat, confer, consult, council, and determine of statutes, articles, and ordinances touching and concerning the aforesaid master, &c. and the good rule and government of the same according to their discretions; and his said late majesty did further will, and for himself, his heirs and successors, grant to the aforesaid master, &c. for the time being, or any six of them at the least (whereof he willed the master, &c. &c.), upon public

public summons to that convocation made, should have full and absolute power and authority from time to time to set down, constitute, and ordain, and make whatsoever reasonable laws, statutes, ordinances, decrees, or constitutions, in writing, which they or any six of them at the least (whereof he willed, &c. &c.) should think in their sound discretions to be good, wholesome, profitable, honest, and necessary for the good rule and government of the aforesaid master, &c. and of all other persons of the aforesaid art or mystery of a plumber within his said late majesty's aforesaid city of L. aforesaid, the suburbs and precincts of the same, and within seven miles of the same city, for the time being exercising, using, or in any manner occupying, and for declaration in what manner and order the same master, &c. and all and singular other persons the said art or mystery within the said city of L. the suburbs and precincts of the same, and within seven miles of the same city, for the time being exercising, &c. should behave, bear, and use themselves in their office, mystery, or art, for the fruitful, good, public, and common profits of the same master, &c. and for other matters and causes whatsoever touching or in anywise concerning the aforesaid art or mystery; and that the said master, &c. for the time, or six of them at the least (whereof he willed, &c. &c.), as often as they should make any such laws, statutes, constitutions, ordinances, and constitutions in form aforesaid, they should make, limit, and provide such and the like punishments and penalties, by imprisonment of body, or by fines or amerciaments, or by both of them, towards and upon all them that should offend contrary to such laws, &c. or any of them, or any such other, and which the same master, &c. for the time being, or to six of them at least (whereof he willed, &c. &c.) should seem more necessary, fit, and requisite for the keeping of the same laws, &c.; and that the same master, &c. for the time being, or six of them at least (of whom he willed, &c. &c.) should have power to have and levy the same fines and amerciaments to the use of the said master, &c. and their successors, without any impediment of his said late majesty, his heirs and successors, and without any account or other thing to him, his heirs and successors, to be therefore rendered or paid; all and singular which jurisdictions, ordinances, laws, statutes, and constitutions, so as aforesaid to be done, he willed to be observed and kept under the punishments in the same to be contained, as by the said letters patent now brought into court (among other things) more fully appears; which said letters patent, soon after the granting thereof, to wit, on, &c. in the said ninth year, &c. were accepted by the freemen of the mystery of plumbers aforesaid, to wit, at, &c. and by force and virtue thereof, they the said freemen of the mystery of plumbers aforesaid were, and they and their successors for the time being continually from that time hitherto have been, and still are a corporate and politic body, by the name of the master, &c. : And the said master, &c. in fact say, that after the making and acceptance of the aforesaid letters patent, and before the exhibiting the bill of the said master, &c. to wit, on,

&c. in the ninth year aforesaid, J. R. then being master, and R. G. and G. M. then being wardens, and divers other persons of the commonalty of freemen of the said mystery, to the number of six or more, being present at a court or convocation of the same master, &c. duly called, summoned, and holden for such purpose in the hall of the said master, &c. situate in, &c. within the city of L. did make and ordain certain reasonable ordinances for the good rule and government of the said master, and did thereby ordain and establish (among other things) that four times in the year, yearly from time to time, at all times thereafter, that is to say, on, &c. on, &c. on, &c. on, &c. there should be holden for the said company of the said art, trade, or mystery, general assemblies or courts, commonly called quarter days of assemblies, and did likewise (among other things) further ordain and establish, that all and every person and persons, being or which should be free of the said company, should pay to the said master and wardens for the time being, to the use of the said company, from thenceforth yearly for ever, from quarter to quarter, on every of the aforesaid quarter days, one consequently ensuing another, in the name of quarterage, as followeth, that is to say, every one being an householder, on every of the aforesaid quarter days, twentypence, which maketh six shillings and eightpence in every year, and every one called a journeyman, on every of the said quarter days, tweldepence, which maketh in the year four shillings, towards the maintenance of the said company: And further also, that every person should bring into the common hall of the said company of the said art or mystery, at such days commonly called quarter-days, appointed or kept as aforesaid, all that and such portion of money as he was or ought to pay for quarterage by reason of that ordinance; and whosoever should wilfully refuse, deny, or fail to make payment thereof, should forfeit and pay to the master and wardens for the time being, for every such default, refusal, denying, or failing to be made therein the sum of six shillings and eightpence of lawful, &c. to be levied, received, and applied to such uses as aforesaid, as by the said ordinances, reference being thereunto had, more fully appears; which said ordinance afterwards, to wit, on, &c. upon the petition of the said then master, &c. and according to the tenor of a certain act of parliament in such case made and provided, by Thomas lord E. then lord high chancellor of England, Robert earl of Salisbury, then lord treasurer of England, sir T. F. then chief justice of the court of king's bench, and sir E. C. knight, then chief justice of the court of common pleas, were seen, perused, read, examined, and approved: And the said master, &c. in fact further say, that after the making, examining, and approving of the aforesaid ordinances, and before the exhibiting the bill of the said master, &c. to wit, on, &c. and before was, and ever since hath been, and still is a freeman of the said company and an householder, and as such freeman and householder, by virtue of the said ordinances, during all the time aforesaid, has been liable to pay, and ought to have paid to the said masters, &c. for the time being,

being to the use of the said company, on, &c. and on every of the aforesaid other quarter days which have elapsed since the said feast-day of, &c. twentypence, making six shillings and eightpence in the year towards the maintenance of the said debt; yet the said James well knowing the premises, did not, although often requested, pay, nor hath on the said feast day of, &c. ever paid the said sum of twentypence towards or for the maintenance of the said company, according to the form and effect of the said ordinances, but hath therein during all the time aforesaid, on each and every of those feast days wilfully failed and made default, contrary to the form and effect of the said ordinances, whereby the said James forfeited for his several defaults, the sum of seventeen pounds six shillings and eightpence, being at and after the rate of six shillings and eightpence for every of the aforesaid quarter days upon which the said James so made default as aforesaid, and which said sum of seventeen pounds six shillings and eightpence, and every part thereof, was and is wholly unpaid to the said master, &c. for the several times being when those several defaults were respectively made as aforesaid, whereby an action hath, &c. to demand, &c.: Yet the said James, although often requested, hath not yet paid the said sum of seventeen pounds six shillings and eightpence, or any part thereof to the said master, &c. but to pay the same to them hath hitherto wholly refused, and still refuses, to, &c.; damage, twenty pounds.

Demurrer (to the last declaration) for not shewing that any quarterly meetings were held, or that defendant had notice of them, or that he did not bring the money to the common hall, or that the master was there to receive it, and declaring for several forfeitures and defaults as a single one.

And the said James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith, that the declaration aforesaid, and the matters therein contained in manner and form as the same are above stated, are not sufficient in law for the said master, wardens, and commonalty of freemen of the mystery of plumbers of the city of London to have their aforesaid action thereof maintained against him, to which said declaration, and the matters therein contained in manner and form as the same are above stated and set forth, he the said James is not under any necessity, nor in anywise bound by the law of the land to answer, and this, &c.; wherefore for want of a sufficient declaration in this behalf, he prays judgment, and that the said master, &c. of freemen of the mystery aforesaid may be barred from having their aforesaid action thereof maintained against him, &c.: And for causes of demurrer of law, according to the form of the statute, &c. he the said James sets down and shews to the court here the causes following, that is to say, for that by the ordinances set forth in the said declaration it appears, that there should be holden for the said company of the said trade or mystery, general assemblies or courts, commonly called quarter days or assemblies, and that all and every person and persons being, or which should be free of the said company, should pay to the said master and wardens for the time being, to the use of the said company from thenceforth for ever, from quarter to quarter on every of the aforesaid quarter days, one consequently ensuing another, in the

name of quarterage, as is in the said declaration mentioned, and should bring the same into the common hall of the said company of the said art or mystery at such days commonly called quarter days, appointed or kept as aforesaid; nevertheless it is not stated, nor does it appear in or by the said declaration, that during the time therein mentioned, there were holden for the said company of the said art, trade, or mystery, any such general assemblies or courts as aforesaid, or if there were, that he the said James had notice thereof, and of the times when the same were so holden, or that he did not pay to the said master and wardens for the time being, to the use of the said company, on every of the quarter days whereon such general assemblies or courts were holden, the said sum of twenty-pence, in the said declaration in that behalf mentioned; but it only appears in and by the said declaration, that he the said James did not pay the said sum of twenty-pence on certain feast days therein mentioned, without shewing or alledging that those feast days were quarter days whereon such general assemblies or courts were to holden as aforesaid; and also for that it does not appear in and by the said declaration, that the said James did not bring the said sum of twenty-pence into the common hall of the said company of the said art or mystery, at such days commonly called quarter days, appointed or kept as aforesaid, or that the said master and wardens were then and there ready to receive the same, or that during the time in the said declaration mentioned, there was any common hall of the said court, or if there was, that the same was open on the several quarter days aforesaid; and also for that the said master, &c. have in and by their said declaration declared for several forfeitures arising from several supposed faults as for one single and entire forfeiture: And also for that the said declaration is in this respect double, and in many other respects uncertain, insufficient, and informal, &c.

Drawn by MR. TIDD,

LONDON, to wit. Be it remembered that in the term of Declaration in
St Hilary last past, before our lord the king, at Westminster, debt on bye
came the master, wardens, and freemen and commonalty of the law, at suit of
the mystery of vintners of the city of London, and brought into the the vintners
court of our said lord the king then and there their bill against John company, for
Paisley, being in the custody of the marshal of the marshalsea of, not attending in
&c. of a plea of debt, and there are pledges for prosecuting, to wit, court of assize
J. D. and R. R. which said bill follows in these words, to wit, ants to take the
—London, to wit. The master, wardens, and freemen and livery of the
commonalty of the mystery of vintners of the city of London, company, after
complain of J. P. being, &c. of a plea that he render to them having been
twenty-five pounds of good and lawful money of Great Britain, duly summoned.

whereas the city of London now is, and from time whereof the memory of man is not to the contrary, hath been an ancient city; and whereas within the said city there now are, and for all the

time aforesaid have been several companies, guilds, and fraternities of the said city, divers of which said companies, guilds, and fraternities have, and for all the time aforesaid have had, and have been used and accustomed to have certain members of the said companies, &c. called liverymen of the said companies, &c. and such respective companies, &c. having such liverymen are, and during all the time aforesaid, have been deemed to be livery companies, guilds, and fraternities of the same city; and whereas from time whereof, &c. unto the second day of February, in the ninth year of the reign of James the First, late king of England, the company, guild, or fraternity of the mystery of vintners of the city of London, and the suburbs of the same, was an ancient company, guild, or fraternity of the said city, consisting of a master, wardens, and of divers persons freemen of the said company, &c. and upon and from that day hitherto hath been and still is a body corporate and politic in deed and name, by the name of incorporation hereinafter mentioned: And whereas the said company, &c. of the mystery of vintners of the said city and suburbs, from time whereof, &c. unto the making of the letters patent of incorporation hereafter mentioned, were deemed to be, and were one of the livery companies, &c. of the said city, and were used and accustomed to have, and ought to have divers members freemen of the said company, &c. to be of the livery or cloathing of the said company, &c. and to be called liverymen of the said company, &c.; and the said master, &c. from the time of the making of the said letters patent of incorporation, always have been deemed to be and have been and now are one of the companies of the said city, and for all the time last-mentioned have been used and accustomed to have, and still ought to have divers members, freemen of the said corporation or company, to be of the livery or cloathing of the said corporation or company, and to be called liverymen of the said company or corporation: And whereas the most gracious lord James the First, king of England, and so forth, by his letters patent under the great seal of England, bearing date at Westminster, the second day of February, in the ninth year of his reign over England, France, Ireland, and Scotland, the forty-fifth (which said letters patent so sealed as aforesaid, the said master, &c. bring here into court) of his special grace, certain knowledge, and mere motion, did grant and give power and authority for himself, his heirs, and successors, to all his well-beloved and faithful subjects the freemen of the mystery of vintners of his city of London, and the suburbs of the same, and by these presents, willed, ordained, and for himself, his heirs, and successors, did constitute and declare that they from thenceforth might and should be one body corporate and politic of themselves in deed, fact, and name, and one perpetual company, corporated of one master, three wardens, and the freemen and commonalty of the mystery of vintners of the city of London, and by the same letters patent for himself, his heirs, and successors, did erect, ordain, make, constitute, and establish them by the name of the master, wardens,

wardens, freemen, and commonalty of the mystery of vintners of the city of London, a body corporate and politic for ever, really and fully in and by all things; and that they the master, &c. and their successors should have perpetual succession, and that they and their successors should be named, known, and called by the name of the master, &c. of the mystery of vintners of the city of London, and by that name might plead and be impleaded, answer and be answered, defend and be defended, commence, affirm, and prosecute before any judges or justices, and other the officers and ministers of the said king James the First, his heirs, and successors, and all other persons whomsoever, in any courts and places in all and singular matters, suits, complaints, actions, demands, and causes whatsoever; and that they might have a common seal, to be used for doing their affairs or businesses: And further of his abundant grace, the said king James the First willed, and by the said letters patent for himself, his heirs, and successors, did grant to the aforesaid master, &c. and their successors from time to time, for the good rule and better government of the freemen and commonalty of the mystery aforesaid, and of all others using the mystery of retailing wine within the said city of London, and within three miles from the said city, and for the profit, advantage, and relief of the good and honest, and the terror and correction of the wicked, deceitful, and dishonest, should and might make, ordain, and establish ordinances, rules, provisions, and statutes, agreeable to the laws of his kingdom and reason, as often as they should see fitting: And that the said master, &c. and their successors for the time being, as often as such ordinances, rules, provisions, or statutes should be made, ordained, or established in form aforesaid, might make, limit, and provide such pain, punishments, and penalties, by imprisonment of the body, or by fines and amerciaments, or by either of them, towards and upon all delinquents against such ordinances, &c. or any of them, as to the said master, &c. of the mystery aforesaid for the time being should seem most necessary, fit, and requisite for the observing of such ordinances; and that the said master, &c. of the mystery aforesaid, and their successors, should and might have and levy such fines, forfeitures, and amerciaments to the use of the said master, &c. and their successors, without the let of the said king James the First, his heirs, and successors, or of any the officers and ministers of him, his heirs, and successors, and without any account to be given for the same to him, his heirs, or successors, all and singular which ordinances, &c. so as aforesaid to be made, the said king James the First willed that they should be observed under the pains in them contained, nevertheless so as such ordinances, &c. fines, forfeitures, and amerciaments were reasonable, and not contrary or repugnant to the laws, statutes, customs, or rights of the said king's kingdom of England, or the lawful and laudable customs of his city of London, and that it should and might be lawful to and for the said master, &c. of the mystery aforesaid, and their successors, to appoint, have, and keep a certain

tain hall or council house within the said king's city of London afore said, and that the master and wardens of the said mystery for the time being, or any two of them (of whom the master of the said mystery for the time being, the said late king willed to be one) as often as to them it should seem meet and necessary, should and might for ever thereafter call together and hold within the said house or hall, a court, meeting, or assembly of the said master, or his deputy, wardens, and assistants of the said mystery for the time being, to the number of thirteen persons or more (of whom the master or his deputy, and one warden of the said mystery, for the time being, the said king willed to be two): And that in the said court or assembly the master, or his deputy, wardens, and assistants, to the number of thirteen or more (of whom the master, &c. &c.) should and might treat, confer, consult, advise, and decree of ordinances, &c. touching and concerning the said master, &c. and their successors, and the good conduct, state, and government of the same according to their discretions; and that they the master, &c. or their successors, or the major part of them, yearly or otherwise, at any time or times as to them should seem best, according to the ordinances thereupon by them made, or to be made, should and might out of themselves choose and make one master and three wardens of the said mystery, to rule, govern, and oversee the freemen and commonalty of the mystery afore said; and that the master and wardens of the mystery afore said for the time being, or any two of them, should and might have full power and authority to give and administer the corporal oath as well to the master and wardens then next succeeding, as also to all and singular the freemen of the mystery afore said, who should from time to time be chosen into the assistants of the said mystery, rightly, well, faithfully, and honestly to perform their offices, and to keep all their secrets, which in the court of assistants in the presence of him or them should be communicated or discovered, of and also to all officers of the mystery afore said for the due execution of their offices, rightly, well, and faithfully, in all things touching or concerning their several offices, to all apprentices, and other freemen of the said commonalty, as by the same letters patent of the said king James the First, amongst other things it more fully appears, which said letters patent, that is to say, on, &c. was by them accepted of: And the said master, &c. say, that after the making of the said letters patent, that is to say, on, &c. at a general assembly of the master and wardens, and of the freemen and commonalty of the said company, duly held and assembled in the common hall of the said master, &c. situate and being in London afore said, in the parish of, &c. the said master, &c. did make and ordain a certain bye law or ordinance, intituled, an ordinance for the election of men into the livery of the corporation or mystery of vintners of the city of London, whereby it was ordained and established, that the master and wardens of the corporation or mystery of vintners of the city of L. for the time being, should have a decent livery, comely for themselves, and meet to attend

attend upon the lord mayor and his brethren, the aldermen of the said city, from time to time, and at all times as need should require, and upon the said master and wardens at all such time or times thereafter, and in such gowns and liveries as they should be lawfully warned or summoned to come and be in and upon any necessary occasions concerning the credit and worship of the said society, and that once in every year, or oftener if occasion should serve, the said master, wardens, and assistants, or the major part of them which should be then present at a court of assistants for the time being to be holden for the said mystery, should and might elect and choose into the livery or cloathing of the said corporation or mystery, such and so many of the yeomanry of the said mystery as should seem most meet and convenient unto them; and that every such person of the said yeomanry so chosen into the said livery as aforesaid, should, at or before his admission into the said livery, pay to the said master, &c. of the mystery of vintners of the city of London, to their use, the sum of thirty-one pounds thirteen shillings and fourpence of lawful money of England, and then and there at the same assembly last-mentioned the said master, &c. did make and ordain one other bye law or ordinance, intituled, an ordinance for punishing of such persons as refuse to be of the livery of the mystery aforesaid, whereby it was also ordained and established, that every person or persons of the said corporation or mystery, which at any time thereafter should be by the said master, &c. for the time being, at any court of assistants of the same company elected and chosen into the livery of the mystery aforesaid, and should not, upon notice given to him or them in that behalf by the clerk or beadle of the said mystery for the time being accept of the same, or upon acceptance thereof, should before his admission into the said livery refuse to pay to the said master, &c. of the mystery of vintners of the city of London, the sum of thirty-one pounds thirteen shillings and fourpence of lawful, &c. that then every particular person so refusing to accept of the said livery, or upon acceptance that should refuse to pay the said sum of thirty-one pounds thirteen shillings and fourpence as aforesaid, should forfeit, lose, and pay to the said master, &c. the sum of twenty-five pounds of lawful, &c. to be recovered by action of debt, bill, plaint, or information, to be brought in any court of record within the commonwealth of England, by the said master, &c. of the mystery of vintners of the city of London, both which said bye laws and ordinances are reasonable, and not contrary or repugnant to the laws, statutes, customs, and rights of this kingdom, or the lawful and laudable customs of the city of L.: And the said masters, &c. further say, that at the time of the making of the said bye laws last-mentioned, and for a long time before, and down to this present time, all the several freemen of the said company or corporation, before their admission, to be of the livery or cloathing of the said company, were and are deemed and reputed to be and known by the name of the yeomanry of the said mystery and company: And the said master, &c. further say, that

afterwards, to wit, on, &c. at the common hall of the said master, &c. situate and being in the parish and ward aforesaid, one T. O. then master, &c. &c. &c. of the said company, then and there being all assembled together, and constituting an assembly or court of the said company, called a court of assistants, did elect and choose the said J. P. into the livery or cloathing of the said corporation or mystery, which said J. P. then, and long before, was and now is a freeman of the said company or corporation, and one of the yeomanry of the said mystery, and then and there was a fit and able person to be admitted into the livery or cloathing of the said company: And the said master, &c. further say, that afterwards, that is to say, on, &c. at, &c. notice was duly given by the said J. P. of his said election into the livery of the said company, by W. B. then and now the clerk of the said mystery and company, and the said J. P. was then and there by the said W. B. duly required to attend at the next court of assistants to be held for the said company, to accept and take upon himself the livery or cloathing of the said company; and that afterwards, to wit, on, &c. at a certain other assembly of the then master, &c. of the said company, in due manner held at the common hall of the said master, &c. situate and being in the parish and ward aforesaid, being the next assembly or court of assistants of the said company, after the said notice to given to the said J. P. as aforesaid, at which said court were then present one T. O. then master, &c. &c. &c. of the said company, he the said J. P. did not, in pursuance of the aforesaid notice to him given in that behalf by the said W. B. the then and now clerk of the said mystery or company, appear at the said court, or accept the said livery of the said company, but refused, and still refuses so to do, to wit, at, &c.; whereby and according to the effect of the ordinance or bye law aforesaid, the said J. P. hath forfeited and ought to pay to the said master, &c. the sum of twenty-five pounds of lawful, &c. by reason whereof an action hath, &c. yet, &c.; common conclusion in debt.

1st Plea, *nil debet*; 2d Plea, that there are twelve livery companies in London, and it was ordered at a Lord-mayor's court, that no person should be called to take upon them the cloathing of every company without estate of one thousand pounds, &c. And the said John, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith, that he doth not owe unto the said master, &c. or to any of them, the said twenty-five pounds above by them demanded, or any part thereof, in manner and form as the said master, &c. have above complained against him; and of this he puts himself upon the country: And for further plea in this behalf the said J. P. by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, *actio non*; because he saith, that within the said city of London there now are, and at the time of making the order hereafter mentioned, there were twelve livery companies of the said city, commonly called and distinguished by the name of the twelve companies, and also there were and still are divers other livery companies of the said city, commonly known, called, or distinguished by the name of the

the inferior companies of the said city, to wit, at, &c.: And the said J. P. in fact further saith, that at a court of mayor and aldermen of the said city, held on, &c. at the Guildhall of the said city of L. Sir E. C. knight, then being mayor of the said city, it was ordered for the future that no person should be called to take upon them the cloathing of any of the twelve companies unless they should have an estate of one thousand pounds; and that no person should be called to take upon them the cloathing of any of the inferior companies unless they should have an estate of five hundred pounds, as by the said order now remaining as of record before the mayor and aldermen of the said city, to wit, at London aforesaid, in the parish and ward aforesaid, more fully appears: And the said J. P. further saith, that at the time of the making of the said order of the said court of the said mayor and aldermen of the said city, made the twenty-seventh day of, &c. the master, &c. of the mystery of vintners of the city of London were, and still are one of the twelve companies of the said city, to wit, at London aforesaid, in the parish, &c.; and that the master, &c. of the said city of London, afterwards, and before the said election of the said J. P. into the cloathing or livery of the said company mentioned in the said declaration, to wit, on, &c. at, &c. had notice of the said order so made as aforesaid: And the said J. P. further saith, that true it is that he the said J. P. at the time in the said declaration for that purpose mentioned was, and still is a freeman of the said company, and one of the yeomanry of the said mystery, and had notice of the said ordinances and constitutions of the said company in the said declaration mentioned, as by the said declaration is above supposed: Yet the said J. P. further says, that he the said J. P. at the time when it is by the said declaration pretended that he the said John was elected into the cloathing or livery of the said company, had not, nor at any time since had any estate whatsoever of the value of one thousand pounds; for which reason the said J. P. was not duly elected into the said livery or cloathing of the said company; and this, &c.; wherefore, &c. it, &c.

To the second plea the plaintiffs demurred generally, and the defendant joined in demurrer. *Vide* a report of the case, 1. Burr. 235. the bye law as

well as the declaration were adjudged good, and the plea determined to be bad.

THE MASTER, WARDENS, and SOCIETY of
the MYSTERY of GUN-MAKERS of the
CITY of LONDON, Plaintiffs,
AND

SAMUEL REYNOLDS,

Defendant.

land, by his letters-patent bearing date at Westminster the fourteenth of March, in the thirteenth year of his reign for refusing to accept the office of steward, to provide a feast to a list of persons to be invited, and the shillings and sixpence each tendered, according to the bye-law.

DECLARATION states, that whereas the lord Charles the First, late king of Eng-

Declaration, in debt to the said of the gun-maker's company of the city of London, for a penalty on the bye-law of the said company.

(which said letters-patent, sealed with the great seal of England, the said master, wardens, and society now bring here into court) did will, order, constitute, and grant, that Henry Rowland, Thomas Addis, John Watſon, John Norcott, William Graves, William Dawſton, and divers other perſons in the ſaid letters-patent named, and all and ſingular others uſing, or which hereafter ſhould uſe the art of gun-making within ſaid city of London and the liberties thereof, and within four miles compaſs thereof, and all ſuch others as ſhould be accepted and admitted in ſuch manner as in ſaid letters-patent were expreſſed for ever thereafter, were and ſhould be, by virtue of ſaid letters-patent, one body corporate and politic in deed and in name, and ſhould have continuance for ever, by the name of maſter, wardens, and ſociety of the myſtery of gun-makers of the city of London, and by that name they and their ſucceſſors ſhould and might be able to plead and be impleaded; and ſaid late lord the king, by ſaid letters-patent, for himſelf, his heirs, and ſucceſſors, did give and grant to ſaid maſter, wardens, and ſociety of the ſaid myſtery of gun-makers, and their ſucceſſors, full power and authority to aſſemble themſelves together from time to time in ſome convenient place within ſaid city of London and ſuburbs thereof, where they ſhould think moſt meet, and that then and there they ſhould and might elect and chooſe one of ſaid ſociety in manner and form thereafter in ſaid letters-patent mentioned, which ſhould be and ſhould be called the maſter of ſaid ſociety of the myſtery of gun-makers of the city of London, and that likewiſe then and there they ſhould and might elect and chooſe two of the ſaid ſociety of the myſtery of gun-makers in manner and form as in ſaid letters-patent mentioned, which ſhould be and ſhould be called wardens of ſaid company of gun-makers, and alſo that there be ten or more aſſiſtants of the ſaid ſociety of the myſtery of gun-makers, in manner and form as in ſaid letters-patent expreſſed to be nominated and choſe, which ſhould be and ſhould be called aſſiſtants of ſaid ſociety of gun-makers, who from time to time ſhould be aiding, keeping, counſelling, and aſſiſting to ſaid maſter and wardens of ſaid ſociety for the time being, in all cauſes, matters, things, and buſineſs touching or concerning ſaid ſociety, and alſo that there ſhould be two or more of ſaid company choſen to aſſiſt for the ſearching, viewing, gauging, making trial, marking, or ſtamping of hand guns, to be choſen and ſworn by the maſter, wardens, and aſſiſtants of ſaid ſociety; and ſaid late lord the king did thereby, for himſelf, his heirs, and ſucceſſors, give full power and authority to ſaid maſter, wardens, and aſſiſtants of ſaid ſociety, or the greater part of them for the time being, to chooſe ſuch expert men yearly or oftener, and them out of their places to remove, and others in their places to elect, and from time to time to give meet oaths to ſuch perſon and perſons choſen and to be choſen for the due and faithful execution of their ſaid places; and further the ſaid late lord the king did grant, for himſelf, his heirs,

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heirs, and successors, by letters-patent to said master, wardens, and society, and their successors, that said master, wardens, and assistants of said society of gun-makers for the time being, or the greater part of them, whereof the master and one of the wardens aforesaid for the time being to be two, should and might have full power and authority, by virtue of said letters-patent, to make, ordain, constitute, appoint, and set down from time to time such reasonable acts, orders, decrees, ordinances, and constitutions in writing whatsoever, which to them, or the greater part of them, whereof the master and one of the wardens as aforesaid for the time being to be two, should seem good, wholesome, profitable, honest, and necessary, according to their discretions, as well for and concerning such oaths as should be fit to be administered to the master, wardens, and assistants, or any other of the said society, as for and concerning said art, trade, and mystery of gun-making, and the well ordering and government thereof within the said city of London or the liberties thereof, and within four miles compass of the same, and also for the punishment and reformation of such abuses and deceits from time to time practised, or to be practised, uttering unartificial, unmerchantable, bad, and deceitful guns, or parts of guns, or guns or parts of guns made of ill materials, whereby said late king's loving subjects might be damaged or endangered, or any other wrong, deceit, or abuse offered at any time whatsoever within said city, liberties, and suburbs, or in any other place or places within four miles compass thereof, and also for the support of said company, and for the good rule and government of said master, wardens, and society of said mystery of gun makers of the city of London, and their successors, and all and singular persons using or exercising the art or mystery aforesaid, and every of them, within said city, suburb, or liberties, or within four miles compass thereof, in all matters and things touching or anywise concerning the same, for declaring after what manner, order, and form, said master, wardens, and society, and their successors, and all and every other person or persons using or exercising said art and mystery within the places aforesaid, should behave, demean, carry, and use themselves in their said art, trade, and mystery, for the public good, as well of said late king's subjects in general as of said master, wardens, and society of said mystery of gun-makers, and their successors, and for all other matters, things, and causes touching or concerning said art or mystery, by any manner of means; and whensoever said master, wardens, and assistants of the said society for the time being, or the greater part of them, whereof the said master and one of the wardens for the time being to be two, did or should make, ordain, constitute, and establish such acts, orders, ordinances, decrees, and constitutions as aforesaid, that thereby they should provide and limit such reasonable pains, penalties, and punishments, either by fines, amerciaments, or other lawful ways or means whatsoever, upon all offenders or breakers of such acts, ordinances, decrees, orders, and

and constitutions, as to them or the greater part of them, whereof the said master and one of the wardens for the time being to be two, should seem fit, necessary, and convenient, to be made, set, imposed, limited, and provided for the keeping of said acts, ordinances, orders, and constitutions, and that then and at any time after said master, wardens, and society of said mystery of gun-makers, and their successors, should and might, by virtue thereof, have and levy the said fines, penalties, and amerciaments, to their own use, without the let or hindrance of said late king, his heirs, and successors, and without the giving or rendering any account or other thing to said late king, his heirs, and successors for the same, all which said acts, ordinances, decrees, and constitutions so as aforesaid to be made, said late king willed to be observed and kept, under the pains and penalties therein to be contained, so as always such acts, orders, ordinances, decrees, constitutions, fines, and amerciaments, be reasonable and not repugnant or contrary to the laws or statutes of said late king's realm of England, nor to the customs or usages of the city of London, and for the better execution of that said late king's present grant, touching the premises, the said late king, by said letters-patent, for himself, his heirs, and successors, did assign, name, constitute, and appoint, and make said late king's well-beloved subject said Henry Rowland, the first and then present master of said society of said mystery of gun-makers, to be and continue in said office from the date of said letters-patent unto the first Thursday next following the feast of St. Bartholomew the Apostle, if he should so long live, and from thenceforth until one other should be chosen and named into said office of master into said society, in due manner according to the ordinance and provisions thereafter in said letters-patent mentioned and expressed, he said Henry Rowland taking his corporal oath before the wardens and assistants for the time being, or the greater part of them, for the due and faithful execution of the said office and place of master, to which said wardens and assistants for the time, or the greater of them, said late king did thereby for himself, his heirs, and successors, give power and authority to administer and give said oath to said Henry Rowland, said master of said society; and said late king did, by said letters-patent for himself, his heirs, successors, and assigns, ordain, constitute, and make his well beloved subjects Thomas Addis and John Watson to be the first and then present wardens of said society of the mystery of gun-makers of the city of London, that they and either of them respectively should be and continue in their said offices from the date of said letters-patent until said first Thursday after the feast of St. Bartholomew the Apostle then next ensuing, if said Thomas Addis and John Watson, or either of them, should so long live, and from thence until two others should be chosen into said office of wardens of said society of the mystery of gun-makers, according to the ordinances and provisions in said letters-patent expressed and declared; said Thomas Addis and John Watson taking their corporal

FOR NOT ACCEPTING OFFICE OF STEWARD.

ral oaths before the said masters and assistants for the time being, or the greater part of them, whom said late king did authorize to administer said oaths as aforesaid, and said late king, by said letters-patent, for himself, his heirs, and successors, did assign, name, constitute, make, and appoint his well-beloved subjects John Norcott, William Graves, William Dawson, William Clare, John Ellis, William Watson, George Day, John Silk, senior, John and Christopher Fell, to be the first and then present assistants of said society of said mystery of gun-makers, to be and continue in said office of assistants during their natural lives, unless they or any of them respectively should happen to be removed for misbehaving him or themselves in their said office, and for some other reasonable and just cause, they taking their corporal oaths before said master and wardens for their faithful execution of said places of assistants whom said late king did thereby authorize to administer the same oaths accordingly, as by said letters-patent, relation being thereto had, more fully and at large appears; which said letters-patent said master, wardens, and society afterwards, to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap, accepted; and said master, wardens, and society say, that within the city of London aforesaid there now are, and from time whereof the memory of man is not to the contrary, there have been divers companies, guilds, and fraternities in the said city of London, which said companies, for and during all the time aforesaid have, and have used and been accustomed to have public feasts or dinners for the members of such companies, guilds, &c. at certain times in the year, to wit, at London, &c. aforesaid: And said master, wardens, and society further say, that after granting said letters patent and acceptance thereof as aforesaid, to wit, on the thirteenth day of July, in the twenty-second year of the reign of the late king Charles the Second, at the then place of meeting of the master, wardens, and society, situate in London aforesaid, the then master, wardens, and assistants of said society met and assembled themselves together to treat, consult, and determine of and concerning certain orders, decrees, ordinances, and constitutions for the well ordering and government of said society, their trade and mystery of gun-making, and being then and there so met together and assembled, said master, wardens, and assistants of said society (whereof the then master and one of the wardens were two) did then and there, according to the powers granted to them by said letters patent, and by force of the same, for the well ordering and government of said society, art, trade, and mystery, make, ordain, constitute, appoint, and set down certain orders, decrees, ordinances, and constitutions in writing, by one of which said ordinances it was ordained the first Thursday of every month should be the usual and ordinary court days for the master, wardens, and assistants of the said company, to assemble and meet together touching the offices of said company, and that on every of said days a court of assistants of the said company should be held at the hall or usual place of meeting of said company, and

DEBT.—ON BYE LAW. VINTNER'S COMPANY

if occasion did require, then such court or assembly to be oftener, and at such time and times as by said master and both, or one of the wardens of the said company should be thought fit, and caused to be summoned; and also that there should be an assembly or general court or courts for the holding and general society and fellowship of the said company, the said general court or courts to be from time to time held and kept when and as often as said master or wardens should summon and appoint the same; and further, that there should be yearly four general courts, the same to be held yearly, one upon the first Thursday next after the feast of St. Michael the Archangel, the second quarterly day upon the first Thursday next after the birth of our said Lord God, commonly called Christmas-day, the third upon the first Thursday next after the feast of the Annunciation of the Blessed Virgin Mary, and the fourth quarterly day upon the first Thursday next after the Nativity of St. John the Baptist, all the said several courts to be held at their common hall or usual places of meeting within the city of London, or the liberties thereof, called Gun-maker's Hall, and by another of said decrees for the continuance and preservation of brotherly love and amity in said company, it was ordained, that the master, wardens, and assistants, or major part of them for the time being (whereof the master and one of the wardens should be two) should yearly, on the quarterly day or quarterly court to be holden for said company next and immediately after the feast of St. John the Baptist, nominate, publish, and appoint two persons of the assistance, not having been master or wardens, or fined for the same, or of the in others in the said company should take upon them and be called stewards for the assistant's dinner of said society, to be held and kept from the first Thursday next after the feast of St. Bartholomew the Apostle, at the proper costs and charges of the said steward's receiving upon invitation or notice to be given thereof a week before of and from every person that should come two shillings and sixpence, at which said dinner might be present the master, wardens, assistants, and their wives, and the rest of said company; and if any person so nominated, published, and appointed steward, should refuse and omit to hold and perform the same in convenient, decent, and seemly sort, he should forfeit and lose the sum of five pounds, and if said master, wardens, and assistants, should see fitting, said person should be dismissed of and from the place of livery of said company, and that none should be for time then to come accepted and taken to be of the assistance of said company, until he should have borne and held said place and duty of steward of said assistant's dinner of said company, or paid a fine for the same, but it was by said last-mentioned decree or ordinance provided, that no person who had then borne the office or place of master or warden of said society, should be nominated and appointed to said office of steward, nor should any person be there charged with the same; which said acts, ordinances, decrees, orders, and constitu-

tions,

NOT ACCEPTING OFFICE OF STEWARD.

tions, and the fines, and the being reasonable and not repugnant to the laws and statutes of the realm, nor to the customs of said city of London afterwards, to wit, on the thirteenth of July, in the twenty-second year of the reign of said late king Charles the Second, at London, &c. aforesaid, were (among other things) allowed and approved of by Sir Orlando Bridgman, knight, then lord-keeper of the great seal of England, Sir John Kelynge, knight, then chief justice of his said late majesty king Charles the Second's court of King's Bench, and Sir John Vaughan, knight, then chief justice of his said late majesty king Charles the Second of common pleas at Westminster, according to the form of the statute in such case lately made and provided; of all which said premises said defendant afterwards, to wit, on the first day of June A. D. 1768, had notice: And said master, wardens, &c. further say, that on the thirty-first of June A. D. 1768 aforesaid, being the first Thursday next after the feast of the Nativity of St. John the Baptist, a quarterly court of said society or company (whereof the master and one of the wardens were two) was in due manner holden at the usual place of meeting of the said society, and at the Ship Tavern, Leadenhall street, London, aforesaid; at which said quarterly court so holden as aforesaid said defendant and one Thomas Christopher, then being of said society, and neither of them having been or having borne the office of master, or one of the wardens of said society, &c. or fined for the same, nor they nor either of them having been stewards or steward of said assistant's dinner of said society, or company, before charged with the same, they the said defendant and Thomas Christopher were, by the major part of the then master, wardens, and assistants of said society or company (whereof said master and one of the wardens were two) nominated, published, and appointed to be stewards for the said assistant's dinner of said society, at a court to be held and kept on the first Thursday next after the feast of St. Bartholomew the Apostle then next following, according to the said act, order, decree, or ordinance in that behalf made and provided, it being then and there requisite to nominate and appoint such stewards for the purpose aforesaid: And said plaintiffs further say, that said defendant and Thomas Christopher being so published, nominated, and appointed as aforesaid, afterwards, to wit, on the thirtieth of July, in the year 1768 aforesaid, were in due manner summoned to be and appear at the then next court of assistants of said society or company at the Ship Tavern, in Leadenhall-street, aforesaid, on the fourth of August then next ensuing, to take upon them said office of stewards as aforesaid; and on the said fourth of August said defendant and Thomas Christopher appeared, and although said defendant and Thomas Christopher did appear as aforesaid, and although said defendant and Thomas Christopher then and there had due notice of their being nominated, published, and appointed in form aforesaid.

DEBT.—ON ESCAPE,

said to take upon them office of stewards, and although same was more than a week before said first Thursday next after the feast of St. Bartholomew the Apostle above-mentioned; and although afterwards, and a week before said last Thursday above mentioned, to wit, on the fifteenth of August 1768, aforesaid, in the parish of St. Botolph, Aldgate, in the ward of Portoken, a list of the persons to be invited and partake of such dinner was then and there duly tendered to the said defendant and Thomas Christopher, consisting of twenty-eight persons, and although then and there, at the said time and place, the sum of three pounds ten shillings, being at and after the rate of two shillings and sixpence for each and every the said persons who were to be at the said dinner, and then and there, for and on behalf of the said company, &c. was duly tendered to the said defendant and T. Christopher, according to the true intent and meaning of the aforesaid acts, &c.; yet the said defendant, not regarding the said acts, &c. nor regarding his duty in this behalf, did not then, or at any other time take upon himself the said office of one of the stewards as aforesaid, or hold or perform the same, but contemptuously refused to take upon himself the said office of one of the stewards for the purpose aforesaid, and omitted and refused to hold and perform the same, to wit, at London aforesaid, in the parish and ward aforesaid; by means whereof, &c. the said defendant then and there forfeited to the said master, &c. for such his offence the sum of five pounds; whereby an action hath accrued to the said plaintiff to demand, &c. [Common conclusion in debt.]

DEBT.—ON ESCAPE.

To the Justices of the Lord the King of the Bench.

Declaration in
B. R. in debt.
against the warden
of the Fleet
prison, for an
escape of a prisoner
charged in
execution in the
Palace Court,
and turned over
to the Fleet by
an *habeas corpus*.

LONDON, to wit. Rebecca Baker, by A. B. her attorney, complains of John Eyles, esquire, warden of his majesty's prison of the Fleet, present here in court in his own person, of a plea that he render to her eighty pounds ten shillings and fourpence of lawful, &c. which he owes to and unjustly detains from her, &c.; for that whereas the said plaintiff heretofore, that is to say, at the court of our lord the now living of his palace at Westminster, held at Southwark, in the county of Surry, within the jurisdiction of the said court, on Friday the twelfth day of January, in the twenty-third year of the reign of our lord the now king, before Charles duke of Marlborough, then steward of the king's household, sir Philip Meadows, knight, then marshal of the said household, and Sidney Stafford Smith, esquire, then steward of the said court, then judges of the court aforesaid, by virtue of the letters patent of Charles the Second, late king of England, &c. bearing date at Westminster, the first day of October, in the sixteenth year of his reign, by the judgment and consideration of the said court recover-

ed against one William Stroud forty pounds five shillings and two-pence, which were then and there in and by that court awarded to the said plaintiff for her damages which she had sustained as well on occasion of the not performing of certain promises and undertakings then lately made by the said William Stroud to the said plaintiff within the jurisdiction of that court, as for her costs and charges by her laid out about her suit in that behalf, whereof the said William Stroud was convicted, as by the record and proceeding thereof, still remaining in that court in full force and effect, more fully appears; and afterwards, to wit, at the king's court of his palace aforesaid, holden at Southwark aforesaid, within the jurisdiction aforesaid, on Friday the twenty-seventh day of April, in the twenty-third year aforesaid, before the aforesaid then judges of the court aforesaid, he the said William Stroud being then and there personally present in the said court at the instance of the said plaintiff in that behalf, was committed by the said court in execution, under the custody of the keeper of the prison of the court aforesaid, for the damages, costs, and charges aforesaid, there to remain until, &c. as by the record of the said commitment still remaining in that court more fully and at large appears; by virtue of which said commitment the said William Stroud remained and continued in the prison of that court, under the custody of the said keeper of that prison in execution at the suit of the said plaintiff, for the damages, costs, and charges aforesaid, from thence until the said William Stroud afterwards, to wit, on the third of May, A. D. 1750, by virtue of a certain writ of *habeas corpus cum causa* before then sued and prosecuted out of the court of our lord the now king of the bench here, directed to the judges of his said majesty's court of his palace of Westminster, and to every of them, was duly brought before sir Thomas Abney, knight, then one of the justices of the court of our lord the now king of the bench here, to wit, at his chambers, situate in Serjeant's Inn, in Chancery-lane, London, and by the return of that writ, the said William Stroud was charged with the said execution for the damages, costs, and charges aforesaid, at the suit of the said plaintiff, and the said William Stroud was then and there committed by the said sir Thomas Abney, knight, so then being one of the justices of the said court of the bench here to his majesty's prison of the Fleet in execution at the suit of the said plaintiff for the damages, costs, and charges aforesaid, there to remain until, &c. as by the said commitment more fully appears; by means whereof the said defendant, who then was and still is warden of the said prison of the Fleet, had and detained the said William Stroud in his custody in execution, at the suit of the said plaintiff, for the damages, costs, and charges aforesaid, from thence until he the said defendant, so being warden of the said prison, not regarding the duty of his said office of warden of the prison, afterwards, to wit, on the third day of May, A. D. 1750 aforesaid, at London aforesaid, in the parish of St. Bridget, otherwise Brides, in the ward of Farringdon Without, freely and voluntarily, and without the licence or consent of the said

DEBT.—ON ESCAPE, AGAINST BAILIFF.

said plaintiff, suffered and permitted the said William Stroud to escape and go at large out of the custody of the said defendant, he the said defendant then and still being warden of the said prison of the Fleet, and the said plaintiff being then and still wholly unsatisfied of the said damages, costs, and charges, and every part thereof; whereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendant forty pounds five shillings and twopence, parcel of the said eighty pounds ten shillings and fourpence above demanded: Suit, &c.

J. MORGAN.

Common Pleas, Michaelmas 1747.

Declaration in debt, against the bailiff of the borough of Andover, for the escape of a prisoner in execution under a judgment in the borough court of Andover, in the time of one bailiff, and afterwards assigned over in execution to defendant.

HAMPSHIRE, to wit. Isaac King, late of, &c. keeper of the common gaol of and for the borough and town of Andover, within the said county, was summoned to answer unto William Gilbert of a plea, that he render to him eighteen pounds two shillings and twopence, which he owes to him and unjustly detains from him, &c.; and whereupon the said plaintiff, by Robert Bird his attorney, complains, that whereas the said plaintiff, on the twentieth day of November, in the twelfth year of the reign of our lord the now king, at the court of record of our said lord the king then held at the borough or town of Andover aforesaid, and within the jurisdiction of the said court, before Thomas Woodman, gentleman, then bailiff of the said borough or town, and George Noyes the younger, then deputy steward there, according to the custom of the said court time out of mind used and approved therein, by judgment of the said court recovered against Thomas Early eighteen pounds two shillings and twopence which were then and there adjudged to the said plaintiff by the same court for his damages which he had sustained by reason of certain promises and undertakings to the said plaintiff by the said Thomas made at Andover aforesaid, within the jurisdiction of the same court, and not performed for causes of action accrued within the jurisdiction of the said court, whereof the said T. Early is convicted, as by the record thereof still remaining in the same court at Andover aforesaid in full force, not reversed or vacated, fully appears: And whereas also the said plaintiff for obtaining execution of the said judgment, afterwards, to wit, at the said court of record of the said lord the king, held afterwards to wit, on the eleventh day of December, in the twelfth year aforesaid, at the borough or town of Andover, and within the jurisdiction of the said court, before the said Thomas Woodman, then bailiff, and the said George Noyes, then deputy steward of the said borough or town, according to the custom aforesaid, prosecuted out of the same court a writ of our lord the king against the said Thomas Early, upon the said judgment, directed to John Hacke and John Bishop, then serjeants at mace of the bailiff of the borough and town aforesaid, and ministers of the said court there, and to Roger Hurst, he the said Roger Hurst then being deputy keeper of the common gaol of our said lord the king of and for the said borough or town, by the name of Roger Hurst,



Hurst, keeper of the common gaol of our said lord the king for the said borough or town, by which said writ they were commanded to take the said Thomas Early, if he should be found within the borough or town aforesaid, and him safely keep, so that they might have his body before the bailiff and steward, or his deputy of the said borough or town aforesaid of our said lord the king, on Monday, the eighteenth day of the said month of December, at the Guildhall of the said borough or town, at the next court of our said lord the king to be then and there holden before them to satisfy the said plaintiff of the said eighteen pounds two shillings and twopence, which to the said plaintiff in the same court had been adjudged for his damages which he had sustained by reason of the said promises and undertakings to the said plaintiff by the aforesaid Thomas made, at Andover aforesaid, and not performed, whereof he was convicted; which said writ afterwards, and before the return thereof, to wit, upon the same day and year, at Andover aforesaid, was delivered by the said plaintiff to the said Roger Hurst to be executed in due form of law: And whereas the said court of record of our said lord the king, from time whereof the memory of man is not to the contrary, hath been and still is, and of right ought to be held in and for the said borough from time to time, before the bailiff of the said borough or town for the time being, and the steward of the said borough or town or his deputy for the time being; and whereas also there is, and time out of mind has been within the said borough or town, and within the jurisdiction of the said court, a common gaol or prison of the said borough or town, for the safe keeping of the prisoners of the said court therein: And whereas also the bailiff of the said borough or town for the time being is, and for time out of mind hath been the keeper of the said common gaol or prison, and of the prisoners of the said court from time to time therein being; and whereas the said Roger Hurst, by virtue of the said writ, afterwards, and before the return thereof, to wit, upon the same day and year last aforesaid, at Andover aforesaid, and within the jurisdiction of the said court, took and arrested the said Thomas Early, and had him in the said gaol in custody, the said Roger Hurst then and there being deputy keeper thereof, and then and there had kept him in custody of the then bailiff of the said borough or town and keeper of the said gaol, in execution for the damages aforesaid; and the said Thomas Early, so being in prison in the said gaol there, in execution as aforesaid, was and continued in prison there in execution as aforesaid, under the custody of the bailiff of the said borough from time to time, being from thence until the said defendant afterwards, to wit, upon the twenty-ninth day of September, A.D. 1741, at Andover aforesaid, is duly made and constituted bailiff of the said borough or town, and then and there took upon himself the said office, and by virtue thereof then and there became and was keeper of the said gaol and being so bailiff, and also keeper of the said gaol, he the said Thomas Early, so being in execution in the said gaol as aforesaid, he the said defendant afterwards,

DEBT.—ON ESCAPE, AGAINST

afterwards, to wit, upon the same day and year, at Andover aforesaid, received the said Thomas Early into his custody as his prisoner in the said gaol in his custody in execution for the damages aforesaid, from thence until the said defendant afterwards, and during the time of his being bailiff of the said borough and town, and keeper of the said gaol aforesaid, to wit, on the first of December, in the year 1741 aforesaid, at Andover aforesaid, voluntarily permitted the said Thomas Early to escape out of the said prison and go at large out of his said defendant's custody, without the consent and against the will of the said plaintiff (he the said plaintiff not being paid or satisfied his damages aforesaid nor any part thereof); whereby an action accrued to the said plaintiff to demand and have of the said defendant the said eighteen pounds two shillings and twopence; yet the said defendant, &c. [Common conclusion in debt.]

The judgment must be drawn up in form or else it cannot be given in evidence, being a copy of a record.

Easter Term, 23. Geo. III.

Declaration in debt, against the sheriffs of London, for the escape of a prisoner in their custody in execution at the suit of plaintiff.

LONDON, to wit. Thomas Dobien complains of William Nicholson, esquire, and William Gill, esquire, late sheriffs of London, being, &c. in a plea that they render said plaintiff twenty-six pounds of lawful, &c. which they owe to and unjustly detain from him, &c.; for that whereas the said plaintiff heretofore, to wit, in Easter Term, in the twenty-first year of the reign of our sovereign lord the now king, in the court of our said lord the king, before the king himself (the said court then and still being held at Westminster, in the county of Middlesex), by the consideration of the said court recovered against one John Daily a certain debt of twenty pounds, and also six pounds, which in and by the said court of our said lord the king, before the king himself, were adjudged to the said plaintiff by his assent, for his damages which he had sustained, as well by occasion of detaining the said debt as for his costs and charges by him in and about his suit in that behalf expended, whereof the said John Daily was convicted, as by the record and proceedings thereof still remaining in the said court of our said lord the king, before the king himself (to wit, at Westminster), more fully appears, which said judgment still remains in full force, strength, and effect, in no wise reversed, annulled, paid off, or satisfied, to wit, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap: And the said plaintiff in fact further saith, that the said debt and damages, so by him in form aforesaid recovered, being unpaid and unsatisfied, on the thirty-first day of May, in the year of Our Lord 1782, sued and prosecuted out of the said court of our said lord the king, before the king himself (the said court then and still being held at Westminster aforesaid), a certain writ of our said lord the king, called a *testatum capias ad satisfaciendum* of and upon the said judgment, directed

If you do not know the exact day, on which the writ was issued, put the day of the writ.

THE SHERIFFS OF LONDON.

directed to the then sheriffs of L. whereby the said sheriffs were commanded that they should take the said John Daily, if he might be found in their bailiwick, and him safely keep, so that they might have his body before our said lord the king at Westminster, on Wednesday next after three weeks of the Holy Trinity, to satisfy the said plaintiff the said debt and damages so by him in form aforesaid recovered, and that the said sheriffs should have then there that writ, which said writ afterwards, and before the return thereof, to wit, on the seventh day of June, in the year 1782, at L. at, &c. aforesaid, was delivered to the said defendants, who then and from thenceforth until, and at, and after the return of the said writ were sheriffs of L. to be by them executed in due form of law, by virtue of which said writ they the said defendants, so being such sheriffs of L. as aforesaid, afterwards, and before the return of the said writ, to wit, on the day and year last aforesaid, and within the bailiwick as such sheriffs as aforesaid, to wit, at L. &c. aforesaid, did take and arrest the said John Daily by his body, and then and there had kept and detained him in their custody, and in execution of the said debt and damages in the said writ mentioned at the suit of the said plaintiff, until they said defendants, so being such sheriffs of L. as aforesaid, not regarding the duty of their said office of sheriffs of London; afterwards, and whilst the said defendants were such sheriffs of L. as aforesaid, *and after the return of the said writ, on the tenth day of August, in the year 1782* as aforesaid, at L. aforesaid, without leave or licence, and against the will of the said plaintiff, suffered and permitted the said John Daily to escape and go at large from and out of the custody of the said defendants as such sheriffs as aforesaid wheresoever he would, whereby an action accrued to the said plaintiff to demand and have of and from the said defendants the said twenty-six pounds above demanded; yet the said defendants, to wit, at L. &c. aforesaid (although often required), have not, nor hath either of them as yet paid the said sum of twenty six pounds above demanded, or any part thereof, to the said plaintiff, but they so to do have, and each of them hath, hitherto wholly refused, and still do, and each of them still doth refuse, to the damage of the said plaintiff of twenty pounds; and therefore he brings his suit, &c. *Pledges, &c. V. LAWES.

Trinity Term, 24. Geo. III.

(a) AFFIDAVIT to be annexed to the following plea of fresh suit and recaption, according to the requisition of *Stat. 8. and 9. Wm. 3. cap. 27. sect. 6.*

In the King's Bench. { THOMAS ANDREWS, Plaintiff,
and
BENJAMIN THOMAS, Esq. Defendant.

BENJAMIN THOMAS, esquire, the defendant in the above cause, maketh oath and faith, that if John Stewart, the prisoner

(a) Affidavit of the marshal.

PLEA.—FRESH SUIT, &c. to DEBT ON ESCAPE.

for whose escape this deponent is sued at the suit of the plaintiff in the above cause, did in fact make such escape, he the said John Stewart did make such escape without the privity, knowledge, or consent of him this deponent.

Sworn, &c.

BENJAMIN THOMAS.

Plea to debt on
escape of prison-
er in execution;
nil debet;
fresh suit
and reception;
that prison-
er escaped pri-
vately and vo-
luntarily return-
ed before ex-
hibiting, &c.
and that defend-
ant hath him still
in custody.

THOMAS, ESQUIRE, }
against
ANDREWS.

And the said Benjamin, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that he does not owe to the said plaintiff the said one hundred and seven pounds fourteen shillings above demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea in this behalf, he the said defendant, by leave, &c. says, that the said plaintiff *actio non*; because he says, that the said judgment and commitment in execution in the first Count of the said declaration, and the judgment and commitment and execution in the second Count of the said declaration mentioned, are one and the same judgment and commitment, and not divers or different judgments and commitments; and that the supposed escape in the said first Count, and the supposed escape in the second Count of the said declaration mentioned are one and the same escape, and not divers or different escapes; and that after the said commitment of the said John Stewart to the custody of the said defendant in execution as aforesaid, to wit, on the said twelfth day of May, in the twenty-fourth year of the reign of our lord the now king, at Southwark aforesaid, the said John Stewart forcibly, and without the knowledge, consent, or permission of the said defendant, and against his will, escaped from and out of the custody of him the said defendant as such marshal as aforesaid, and fled to places to him the said defendant unknown, and that upon the said escape of him the said John Stewart, to wit, at Southwark aforesaid, he the said defendant made fresh and close pursuit after the said John Stewart, in order to retake him, and did continue such pursuit from thence until he the said defendant afterwards, and before the exhibiting of the bill of the said plaintiff against him the said defendant in this behalf, to wit, on the day and year last aforesaid, at Southwark aforesaid, retook the said John Stewart upon that pursuit, and again had detained, and always from thence hitherto hath kept and detained, and still doth keep and detain him the aforesaid John Stewart in the custody of him the said defendant in execution at the suit of the said plaintiff, for the said damages, costs, and charges so by him recovered as aforesaid, by virtue of the aforesaid commitment of him the said John Stewart in execution as aforesaid, to wit, at, &c. aforesaid, which said escape in this plea mentioned is the same escape whereof plaintiff hath above complained against him; and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him, &c.: And for further plea in this behalf, he the said defendant, by like leave, &c. says, that

To oust plaintiff
of his action,
the reception
must be before
action brought,
2, Stra. 873.

Debt lies as well
where the escape
is negligent as
where it is vo-
luntarily.

CONSPIRACY BY PRISONERS TO ESCAPE BY FORCE.

that the said plaintiff *actio non* ; because he says that the said judgment and commitment in execution in the first Count of the said declaration mentioned, and the judgment and execution in the second Count of the said declaration mentioned, are one and the same judgment and commitment, and not divers and different judgments and commitments ; and that the said supposed escape in the said first Count, and the said supposed escape in the said second Count of the said declaration mentioned, are one and the same escape, and not divers or different escapes ; and that after the said commitment of the said John Stewart to the custody of him the said defendant in execution as aforesaid, to wit, on the said twelfth day of May, in the twenty-fourth year of the reign of our lord the now king, at Southwark aforesaid, he the said John Stewart, wrongfully, privily, and without the knowledge, permission, or consent of the said defendant, escaped from and out of the custody of the said defendant as such marshal as aforesaid, to places to him the said defendant unknown ; but the said defendant in fact further saith, that the said John Stewart afterwards, and before the exhibiting of the bill of the said plaintiff against him the said defendant in this behalf, to wit, on the day and year last aforesaid, at Southwark aforesaid, voluntarily and of his own accord returned back again into the custody of him the said defendant, and that he the said defendant did thereupon, and then and there keep and detain, and always from hence hitherto hath kept and detained, and still doth keep and detain him the said John Stewart in the custody of him the said defendant in execution at the suit of the said plaintiff, under and by virtue of the aforesaid commitment of him the said John Stewart in execution as aforesaid, to wit, at Southwark aforesaid, in the county aforesaid, which said escape in this plea mentioned is the same escape whereof the said plaintiff hath above complained against the said defendant ; and this he the said defendant is ready to verify ; wherefore he prays judgment if the said defendant ought to have or maintain his aforesaid action against him, &c.

V. LAWES.

THOMAS, ESQUIRE,
against
LATTER.

AND the said defendant, in his own person comes and defends the wrong and injury, when, &c. and says, that he does not owe to the said plaintiff the said thirty-one pounds ten shillings above demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him ; and of this he puts himself upon the country, &c. : And for further plea in this behalf as to the escape in the declaration aforesaid mentioned, and above supposed to have been made, the said defendant, by leave, &c. says *actio non* ; because he says that the said defendant, before and at the time when the escape in the first Count of the said declaration mentioned is alleged to have been made, was, and from

which they assaulted the keepers, and victualled

thence hitherto hath been, and still is, as marshal of the Marshalsea of our lord the king, before the king himself, the keeper of a certain prison, to wit, the prison of our lord the king, commonly called the prison of the Marshalsea of the court of king's bench, otherwise the king's beneu prison, situate and being in the parish of St. George the Martyr, in the county of Surrey, and as such, during all that time did, at his own costs and charges, well and sufficiently repair and keep in good repair the said prison, and all the buildings and appurtenances thereto belonging, according to the form of the statute in that case made and provided; and that being such marshal and keeper of the said prison be the said defendant, before and at the time of the escape of the said Daniel Quarrington in the first Count of the said declaration mentioned, and therein alleged to have been made, had, as such marshal and keeper of the said prison, the custody of divers, to wit, eight hundred prisoners in the said prison, to wit, at Westminster aforesaid, and that the said Daniel Quarrington in the said declaration mentioned, being committed to the custody of the said defendant, as is in the said declaration mentioned, was by the said defendant in pursuance and consequence of the said commitment placed, kept, and detained in the same prison, under the custody of him the said defendant as marshal of the Marshalsea aforesaid, until the time of the escape of the said Daniel Quarrington, and of divers others of the said prisoners from and out of the said prison as is hereafter mentioned, to wit, at, &c. aforesaid: And the said defendant further saith, that the said Daniel Quarrington, so being such prisoner as aforesaid, did, whilst he was and continued in the said prison as aforesaid, to wit, on the said nineteenth of November, A. D. 1770 aforesaid, in the said prison, to wit, at Westminster aforesaid, unlawfully and wickedly, unknown to the said defendant, and also unknown to all and every of the officers of the said prison, and of the persons employed and entrusted by the said defendant touching the custody of the said prison, and the prisoners therein being, combine, conspire, confederate, and agree together with divers other prisoners, to wit, sixty other prisoners, then being in the said prison under the custody of the said defendant as marshal in form aforesaid, unlawfully and by force and violence to break the said prison and escape thereout, and in pursuance of such conspiracy, and in order to bring the same to effect, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, did unlawfully, and without the privity of any or either of the officers of the said prison, or the persons so employed and entrusted by the said defendant touching the custody of the said prison and the prisoners therein being, procured to be brought into the said prison by divers persons unknown to the said defendant, and unknown to any or either of the officers of the said prison, or the persons employed or entrusted by the said defendant in form aforesaid, divers offensive weapons, to wit, clubs, staves, and sticks, and that the said Daniel Quarrington, and the said other prisoners, to wit, the

DEBT.—ON ESCAPE, v. WARDEN OF THE FLEET.

said sixty other prisoners in pursuance of the said unlawful conspiracy, combination, confederacy, and agreement, and with design to accomplish their aforesaid unlawful intent and purpose, afterwards, to wit, on the said nineteenth day of November 1770 aforesaid, unlawfully, and with force and arms, to wit, with the aforesaid clubs, staves, and sticks, did suddenly and riotously, and with strong hand and with great power and violence, without any default or neglect of said defendant, or of any or either of his officers, servants, or keepers, assembled together in the said prison, and did then and there unlawfully, and by force and violence, and with strong hand and great power suddenly assault, beat, bruise, wound, and ill treat the officers, servants, and keepers of the said prison, that is to say, that the turnkeys and other officers of the said prison who had the care, government, and safe keeping of the doors of the said prison, and of the locks, keys, and bolts thereof, and did then and there with great force and violence, &c. (here was an end of the manuscript from which this plea was taken).

LONDON, to wit. William Crowder, by A. B. his attorney, complains of John Eyies, esquire, warden of the prison of our lord the king of the fleet, being present here in court in his proper person, in a plea that he render to the said William twenty-three pounds of lawful, &c. which he owes to and unjustly detains from him, for that whereas the said William heretofore, that is to say, in Michaelmas Term, in the twenty-second year of the reign of, &c. in the court of our lord the king before the king himself (the said court being then and still held at Westminster, in the county of Middlesex) by bill, without his majesty's writ, and by the consideration and judgment of the same court, recovered against one J. B. twenty three pounds, which were awarded to the said William in and by the said court of our said lord the king before the king himself for his damages by him sustained, as well by occasion of the not performing of certain promises and undertakings then lately made by the said J. D. to the said William, as for his costs and charges by him about his suit in that behalf expended, whereof the said J. B. was convicted, as by the record and proceedings still remaining in the said court of, &c.; and the said William afterwards, for having execution of the said judgment, on, &c. in that same Michaelmas term, sued and prosecuted out of the said court of our said lord the king, before the king himself, at Westminster aforesaid, his said majesty's writ of *capias* upon the said judgment, directed to the sheriff of Middlesex, by which said writ our said lord the king commanded the said sheriff that he should take the said J. D. if he should be found in his the said sheriff's bailiwick, and safely keep him so that he might have his body before our lord the king, on, &c. to satisfy the said William in the said sum of twenty-three pounds, which the said William had recovered against the said J. D. for his damages aforesaid, and that the said sheriff should

Declaration of debt against warden of fleet, for suffering a prisoner escape who had been taken in execution on judgment, removed habeas.

DEBT.—PRISONER TAKEN IN EXECUTION, AND*

have there then that writ, which said writ afterwards and before the return thereof, to wit, on, &c. was delivered by the said W. C. to W. G. and W. N. then being sheriffs of the said county of Middlesex, to be executed in due form of law, by virtue of which said writ, the said W. G. and W. N. so being sheriff of the said county of Middlesex, afterwards and before the return thereof, to wit, on, &c. within the bailiwick of the same sheriff, took the said J. D. in the execution for the said damages, and kept and detained the said J. D. in his custody in execution for the damages aforesaid, at the suit of the said W. C. from thence until the said J. D. afterwards, to wit, on, &c. in the twenty-second year aforesaid, and A. D. 1741, by virtue of his majesty's writ of *habeas corpus cum causa*, before then sued out of the court of our said lord the now king of the bench here, against the said J. D. directed to the said sheriff, and returnable immediately after the said sheriff's receipt of the same writ, was by the said sheriff brought before the honourable sir Henry Gould, knight, then and still being one of the justices of our lord the king of the bench here, at his chambers, situate in Serjeant's-inn, Chancery-lane, London, and in and by the return of the said writ of *habeas, &c.* the said J. D. was charged by virtue of the said writ of *habeas, &c.* at the said suit of the said W. C. for the damages aforesaid, and thereupon the said J. D. was then and there committed by the said sir H. G. so being such justice as aforesaid, to the said prison of the fleet aforesaid, in execution, there to remain at the suit of the said W. C. for the damages aforesaid, as by the said writ of *habeas, &c.* and the return thereof, and the said commitment thereon, now remaining in the said court of our lord the now king of the bench aforesaid, at Westminster aforesaid, more fully appears; by means whereof the said J. D. who then was, and ever since has been, and still is warden of the said prison of the fleet, had the said Joseph in custody in execution for the damages aforesaid, at the suit of the said W. C. in the said prison, and kept him there in execution for the cause aforesaid, until he the said J. E. so being warden of the said prison of the fleet as aforesaid, not regarding the duty of his said office of warden of the said prison, afterwards, to wit, on, &c. &c. freely and voluntarily suffered and permitted the said J. D. to escape and go at large out of the said prison, and out of the custody of the said J. E. wheresoever he would without restraint, without the licence and against the will of the said W. C. he the said W. C. then and still being wholly unpaid and unsatisfied his said damages, and every part thereof, and the said John then and still being warden of the said prison of, &c. by reason whereof an action hath accrued to the said W. C. to demand and have of the said J. E. the said twenty three pounds ten shillings above demanded: Yet, &c.; damages, fifty pounds.

GEORGE WOOD.

The general issue, &c. Verdict for plaintiff.

* Removed by Habeas.

LINCOLNSHIRE, to wit. J. L. complains of G. G. late sheriff of the county of Lincoln aforesaid, being, &c. for that whereas one M. S. on, &c. at, &c. was indebted to the said plaintiff in a large sum of money, to wit, twenty-three pounds of lawful, &c. for divers, &c. by the said plaintiff before that time sold and delivered to the said M. at his special instance and request, and being so indebted, he the said M. in consideration thereof, afterwards, to wit, on, &c. undertook, &c. but the said sum of money being wholly unpaid to the said plaintiff, and the said promise and undertaking of the said M. being wholly unperformed, he the said plaintiff for the recovery of his damages by him sustained on occasion of the not performing the promise and undertaking aforesaid, afterwards, to wit, in the twenty-first year of the reign of our lord the now king, sued and prosecuted out of the court of our lord the now king before the king himself, the said court then and still being at Westminster, in the county of Middlesex, a certain writ of our said lord the king called a *latitat*, against the aforesaid M. directed to the then sheriff of the said county of L. by which said writ our said lord the king commanded the said then sheriff of the said county of L. that he should take the said M. if he should be found in his bailiwick, and him safely keep, so that he might have his body before our said lord the king at Westminster aforesaid, on Friday next after the morrow of the Holy Trinity then next following, to answer the said plaintiff in a plea of trespass, and also to a bill of the said plaintiff against the said defendant for twenty-three pounds, upon promises, according to the custom of the said court of our lord the now king, before the king himself to be exhibited, and that the said sheriff should have then there that writ, which said writ afterwards and before the delivery thereof to the then sheriff of the said county of L. to be executed as hereafter is mentioned, was duly indorsed for bail for twenty three pounds, by virtue of an affidavit of the cause of action duly filed in the said court, according to the form of the statute in such case made and provided, which said writ so indorsed as aforesaid, afterwards and before the return thereof, to wit, on, &c. was delivered to one A. B. esquire, who was then and continually afterwards until and at the return of the said writ, sheriff of the county of L. in form of law to be executed, by virtue of which said writ, he the said A. B. so being sheriff of the said county of L. as aforesaid, after the delivery of said writ to him as aforesaid, and before the return thereof, to wit, on, &c. and within his bailiwick, took and arrested the said M. by his body, at the suit of the said plaintiff for the cause aforesaid, and kept and detained the said M. in the custody of the said A. B. so being sheriff of the said county of L. as aforesaid, by virtue of the said writ and arrest, at the suit of the said plaintiff, until he the said plaintiff afterwards, to wit, on, &c. was duly removed from his said office of sheriff of the said county of L. and the said defendant then and there duly succeeded the said A. B. in his said office of

(a) Declaration in case against a sheriff for an escape on a writ of *latitat*, where the plaintiff declares that J. S. was indebted to him, that he sued on a *latitat* against him, where he was arrested in a plea of trespass, and duly turned over to the defendant who permitted him to escape.

(a) This is an action on the case. (See Tort against Sheriffs, &c. for escapes, *post*.)

sheriff of the said county of L. and from thence hitherto hath been and still is sheriff of that county; and thereupon the said A. B. at his said going out of his said office of sheriff of that county, to wit, on, &c. duly delivered over the body of the said M. so charged as aforesaid, and in his custody for the cause aforesaid, unto the said George, whereby the said George so being sheriff of the said county, then and there had the said M. in his custody at the suit of the said plaintiff for the cause aforesaid, and there kept and detained him in his custody for the cause aforesaid, at the suit of the said plaintiff, from thence until he the said G. so being sheriff of the said county of L. as aforesaid, not regarding the duty of his said office, but contriving, and fraudulently and maliciously intending to injure the said plaintiff, and to deprive him of the means of the recovery of his aforesaid damages, afterwards, to wit, on, &c. without the licence and against the will of the said plaintiff, wilfully and voluntarily permitted and suffered the said M. to escape, and go at large out of his custody wheresoever he would, the said plaintiff being then full wholly unsatisfied his said damages; and the said George being then so sheriff of the said county of L. as aforesaid, by reason whereof the said plaintiff is greatly damaged and injured, and is wholly deprived of the means of recovering his said damages or any part thereof, whereby the said plaintiff hath been grieved, and hath sustained damage to the value of forty pounds, and therefore, &c. *Drawn by MR. WARREN.*

Declaration by MIDDLESEX, to wit. St. M. da Costa, executor of the
executors a- last will and testament of P. M. da Costa, deceased, by A. B. his
gainst the war- attorney, complainant of John Ryles, esquire, warden of the prison
of the fleet, of our said lord the king of the fleet, present here in court, in his
for the escape of own proper person, of a plea that he render to him six thousand
a prisoner com- and forty three pounds of, &c. which he unjustly detains from
mitted to his him, &c. for that whereas the said B. in his lifetime heretofore,
charge in exe- to wit, in Michaelmas Term, in the fourth year of the reign of
cution by hab. as our said lord the now king, in the court of our said lord the king
corpus, directed of the bench, at Westminster, before sir C. P. knight, and his
to the warden, brethren, then justices of our said lord the king of the bench, by
the prisoner be- the consideration of the same court, recovered against one M. H.
ing in his cus- three thousand and forty-six pounds, which by the same court was
tody when the then and there adjudged to the said B. for his damages which he
hab. corpus is had sustained, as well by reason of the not performing certain
sued. promises and undertakings heretofore made to him by the
 said M. H. as for his costs and charges by him about his
 suit in that behalf expended, whereof the said M. H. is convicted,
 as by the record and proceedings thereof now remaining in the
 said court of our said lord the king of the bench, at Westminster
 aforesaid, more fully appears; and afterwards, to wit, on Monday
 next after the octave of the Purification of the Blessed Virgin
 Mary, in Hilary Term, in the fourth year of the reign of our said
 lord the now king, in the court of our said lord the now king of
 the

COMMITTED BY HABEAS, BUT IN CUSTODY*

the bench here, before the said sir C. P. knight, and his brethren, then his majesty's justices of the said court, & the said M. H. came in his own proper person, brought under the custody of the said John, then being the warden of the prison of our said lord the king of the fleet, by virtue of a writ of our said lord the king of *habeas corpus*, issued out of the court of our said lord the king of the bench here, at Westminster aforesaid, directed to the warden of our said lord the king's prison of the fleet, the said M. H. being at the time of the issuing the same writ, in the lawful custody of the said warden, whereupon the said M. H. then being present in the same court, at the request and prayer of the said B. was then and there in due manner committed by the said court to the custody of the said John, being then and still warden of the prison of the fleet, in execution for the aforesaid damages, costs, and charges of the said B. as by the record of the said commitment, now remaining in the said court of our said lord the king of the bench, at Westminster aforesaid, more fully appears; by virtue of which said commitment, the said John then and yet being warden of the said prison of the fleet, then and there took and received the said M. H. into his custody for the aforesaid damages, costs, and charges of the said B. and on the day of the escape of the said M. H. hereinafter mentioned, to wit, on, &c. in the fifth year of, &c. he the said John being then and yet warden as aforesaid, had the said M. H. lawfully in his custody in execution for the damage, costs, and charges as aforesaid, to wit, at, &c.; yet the said John then being warden of the said prison of the fleet, and having the said M. H. in his custody in execution for the damages, costs, and charges aforesaid, but disregarding the duty of his office, and contriving and fraudulently intending to cause the said damages, costs, and charges to be wholly lost after the death of the said B. and whilst the said John ought to have kept and detained the said M. H. in execution for the damages, costs, and charges aforesaid, that is to say, on, &c. at, &c. unlawfully and against, without the licence of the said B. in his lifetime, and also against the will, and without the licence of the said plaintiff, executor as aforesaid, permitted and suffered the said M. H. to go at large whither he would, and to escape out of the custody of the said John, then and yet being warden of the said prison of the fleet, the said B. in his lifetime, and the said plaintiff since his death, or any of them, not being satisfied the damages, costs, and charges aforesaid, or any part thereof, whereby, &c. (*per quod actio decedit*) to demand three thousand and forty-six pounds, parcel, &c.: And whereas, &c. (as in the first Count till you come to this mark, then proceed) and the said M. H. then being present in the same court, was, in due manner, committed by the said court to the said prison of the fleet in execution of the damages, costs, and charges aforesaid, as by the record of the said last-mentioned commitment, now remaining in the said court of our said lord the king of the bench, at Westminster aforesaid, more fully appears; by virtue of which said last-mentioned commitment, the

* When Habeas, &c. issued.

PLEA, BY SHERIFF, DEFENDANT REMOVED BY*

said John then and yet being warden of the said prison of the fleet, then and there took and received the said M. H. into his custody in execution for the damages, costs, and charges of the said B. and on the day of the escape hereinafter mentioned, &c. &c. (as before to the end) : Yet, &c.; common conclusion in debt, with profert of letters testamentary.

Plea to debt on escape, that prisoner was arrested by defendant in execution, and removed by *habeas corpus* to the

WYBOURN } AND the said John Wybourn, in his own person, comes and defends the wrong and injury, when, *at suit of* } CHRISTIE. } &c. and says, *assumpsit*; because he says, that true it is, that the said John Christie, in Trinity Term, in the twentieth year of the reign of his present majesty, in the court of our said lord the king, before the king himself, at Westminster, in the said county of Middlesex, by the consideration of the same court recovered against the said J. W. twenty four pounds ten shillings, which in and by the said court there were adjudged to the said J. C. for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings by him the said J. W. before that time made, and whereof the said John Wybourn was convicted as for his costs and charges by him about his suit in that behalf expended, as the said John Christie hath above in declaring alleged; but the said John Wybourn further says, that after the judgment and recovery aforesaid, and before the exhibiting of the bill of the said John Christie in the action, to wit, in the term of the Holy Trinity, in the twentieth year of the reign of the said lord the now king, in order to obtain the satisfaction of the said twenty-four pounds ten shillings upon the said judgment, he the said John Christie prosecuted and sued forth out of the said court of our said lord the king, at Westminster aforesaid, a certain writ of *capias ad satisfaciendum*, directed to the then sheriff of Middlesex, by which said writ the sheriff was commanded that he should take the said John Wybourn, if he should be found in his bailiwick, and him safely keep, so that he should have his body before our said lord the king at Westminster, on Monday next after the Morrow of All Souls, to satisfy the said John Christie in the said twenty-four pounds ten shillings awarded to him for his damages which he had sustained, as well on occasion of the not performing the said promises and undertakings by him the said John Wybourn before that time made; and whereof the said John Wybourn was convicted as for his costs and charges by him about his suit in that behalf expended, and that he should have there that writ, by virtue of which said writ *ad satisfaciendum* the said then sheriff, afterwards and before the return thereof, to wit, on the twenty-sixth day of October, in the twenty-first year of the reign of our said lord the now king, at Westminster, within the bailiwick of the said sheriff, took and arrested the said John Wybourn by his body, and had the said John Wybourn in his custody in execution for his damages aforesaid, from thence until the said Wybourn afterwards, to wit, on the

* Habeas to the Fleet.

DEBT.—ON ESCAPE, REPLICATION.

thirty-first day of October, A. D. 1780, by virtue of his majesty's writ of *habeas corpus cum causa*, before then sued out of the court of our lord the now king of the bench, at Westminster, against the said John Wybourn, directed to the sheriff of the said county of Middlesex, and returnable immediately after the said sheriff's receipt of the same writ, was by the said sheriff, in obedience to the said writ, brought before the honourable John Heath, esquire, being one of the justices of our said lord the king of the bench, at his Chambers, in Serjeant's-inn, Chancery-lane, and in and by the return of the said writ of *habeas corpus cum causa*, the said John Wybourn was charged in execution by virtue of the said writ of *capias ad satisfaciendum*, at the suit of the said John Christie, for the damages aforesaid; and thereupon the said John Wybourn was then and there committed by the said John Heath, so being such justice as aforesaid, to the prison of the Fleet, so charged in execution at the suit of the said John Christie for the damages aforesaid, as by the said writ of *habeas corpus cum causa*, and the return thereof, and the said commitment thereon now remaining in the said court of our said lord the now king of the bench aforesaid, will more fully appear; and this the said John Wybourn is ready to verify: wherefore he prays judgment if the said John Christie ought to have or maintain his aforesaid action thereof against him, &c.

G. Wood.

<p>CHRISTIE } against WYBOURN.</p>	<p>And the said John saith, that notwithstanding any thing by the said J. W. in his plea by him above pleaded in bar alledged, he the said J. C. ought not to be barred from having and maintaining his aforesaid action against him the said J. W. because protesting that the said plea of the said J. W. and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar him the said J. C. from having and maintaining his aforesaid action against the said J. W.; for replication in this behalf the said J. C. saith, that true it is that he the said J. C. prosecuted and set forth the said writ of <i>capias ad satisfaciendum</i> in the said plea of the said J. W. mentioned, and that the said J. W. was taken and arrested by his body, and charged in execution by virtue of such writ, and that he was thereupon committed to the prison of the Fleet so charged in execution at the suit of the said J. C. for the damages aforesaid, as the said J. W. hath above in his said plea by him pleaded in bar alledged: Yet the said J. C. in fact further saith, that the said J. W. after he was so committed to the said prison of the Fleet so charged in execution at the suit of him the said J. C. as aforesaid, to wit, on, &c. without the leave or licence, and against the will of the said J. C. escaped and went at large from and out of the said prison of the Fleet, and from and out of the custody of the warden or keeper thereof, and so hath remained and continued from thence hitherto, notwithstanding the said damages so recovered by the said J. C. at the time of such escape and going at large of the said J. W. as aforesaid.</p>
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Replication, that after he committed the Fleet escaped.

DEBT.—ON ESCAPE. REJOINDER.

said, were and still are wholly unpaid and unsatisfied, to wit, at, W. aforesaid; and this, &c. wherefore, &c. if, &c.

W. BALDWIN.

Rejoinder, that
defendant per-
mitted by virtue
of 20. and 21.
Geo. 3. passed
since the riots.

WYBOURN } And the said J. W. as to the plea of the said
at suit of } J. C. by him above pleaded by way of reply pleaded
CHRISTIE. } as to the said plea of the said J. W. by him above
pleaded in bar, says, that after the making of a certain act of par-
liament which was made at Westminster, in the county of Mid-
dlesex, in the twentieth year of the reign of our sovereign lord
the now king, intitled, “An Act to prevent any Mischief or
“Inconvenience which may arise to Sheriffs, Gaolers, Suitors, Pri-
“soners, or others by the Prisoners in several Gaols in the Coun-
“ties of Middlesex and Surry, and the City of London, having
“been set at liberty during the late Tumults and Insurrections,”
that is to say, on the twenty sixth day of October, in the twenty-
first year of the reign of our said lord the king at Westmina-
ster, in the said county of Middlesex, he the said John Wybourn
was taken in execution by virtue of the said writ of *capias* as
satisfacere, and was afterwards committed by virtue of the said
writ of *habere corpus*, to the custody of the warden of the prison
of the Fleet, charged in execution at the suit of the said John
Christie for the damages aforesaid: And the said John Wybourn
further saith, that after the making of a certain other act of par-
liament which was made at Westminster, in the county of Mid-
dlesex, in the twenty-first year of the reign of our sovereign lord
the now king, intitled, “An Act to extend the Privileges contained
“in an Act passed in the 11th Session of Parliament, a tited, an Act
“to prevent any Mischief or Inconvenience which may arise to
“Sheriffs, Gaolers, Suitors, Prisoners, or others, by the Prisoners in
“several Gaols in the Counties of Middlesex, Surry, and the City of
“London, having been set at liberty during the late Tumults and In-
“surrections,” to persons arrested and bailed since the destruction
of the same gaols, and before the same shall be repaired or other pri-
sons established in lieu thereof, and before the said prison of the Fleet
was repaired, or any other instituted in lieu thereof, to wit, on
the eighteenth day of November, in the year of Our Lord 1781,
the warden of the said prison of the Fleet, by virtue of the said
act, permitted and suffered the said John Wybourn to go at large
from and out of the said prison of the Fleet, and from and out of
the custody of the said warden or keeper thereof; and the said
John Wybourn, by virtue thereof, was enlarged, and did not
otherwise escape or go at large from and out of the said prison, or
out of the custody of the said warden or keeper thereof, and thus
the said John Wybourn is ready to verify: wherefore he prays judg-
ment if the said J. Christie ought to have or maintain his afore-
said action thereof against him.

GEORGE WOOD.

CHRISTIE } And the said John Christie, as to the said plea of Surrejoinder,
against } the said John Wybourn by him above pleaded by that it was by
WYBOURN. } way of rejoinder to the said plea of the said John the said act
Christie by him above pleaded by way of reply to the said plea of enacted, that de-
the said John Wybourn by him above pleaded in bar, after protest- fendant should
ing that the said pleas so pleaded by way of rejoinder, and the return in actual
matters therein contained in manner and form as the same are above custody, and
pleaded and set forth are insufficient in law; for surrejoinder saith, that he did not
that by the first-mentioned act of parliament in the said plea of the said John Wybourn by him above pleaded, by way of rejoinder as aforesaid specified, after reciting, among other things, that whereas divers evil-minded and disorderly persons did, at several times between the second and eighth days of June, in that present year of Our Lord 1780, assemble themselves together within the city of London and Westminster, and borough of Southwark, and being so assembled together at some of the said times, did burn, destroy, and break open divers of his majesty's gaols or prisons, that is to say, the gaol of Newgate, the prison of the Fleet, the King's Bench, and other gaols and prisons in the city of London, and in the counties of Middlesex and Surry, and did cause the prisoners then confined therein to escape and go at large; it was (among other things) enacted and declared, that so soon as the said prison of the King's Bench and of the Fleet respectively should be repaired and made fit for the reception of prisoners, or other prisons substituted in lieu thereof, and the same should be notified in the London Gazette by one of his majesty's principal secretaries of state, all and every prisoner or prisoners who had escaped or been at liberty in consequence of the said tumult and insurrections, and also all such person or persons, defendant or defendants, who had since been committed, and who, under the provisions in the said act before-mentioned were to be deemed and taken as if in custody of the said marshal (that is to say, the marshal of the said King's Bench Prison) or warden respectively, within twenty-eight days next after such notice given in the London Gazette of the repair of the said prisons, or either of them respectively, or of any other prison or prisons being appointed in lieu or of either of them, should and were, by the said act, required to surrender themselves to the keeper of such of the said prisons to which they should respectively belong, and in whose custody they were under the provisions of the said act deemed and taken to be to as to become actual prisoners, and within the walls of such prison or prisons respectively, as by the said act will fully appear: And the said John Christie in fact further saith, that before the day and year in the said plea of him the said John Christie pleaded by way of reply as aforesaid mentioned, to wit, on the sixteenth day of October, in the year of Our Lord 1781, the said prison of the Fleet had been and was repaired and made fit for the reception of prisoners, and the same was notified in the London Gazette of that day by one of his

majesty's then principal secretaries of state, according to the purport and directions of the statute in such case made: And the said John Christie in fact further saith, that the said John Wybourn, at the time of giving such notice of the repair of the said prison of the Fleet as aforesaid, and from thence until and at the end and expiration of twenty-eight days next after the giving of such notice, was a prisoner belonging to the aforesaid prison of the Fleet, under his aforesaid commitment thereto, and under the provisions specified and contained in the said act in this plea particularly mentioned, was deemed and taken, as if in custody of the warden of the said prison of the Fleet: But the said John Christie in fact further saith, that notwithstanding such notice of the repair of the said prison of the Fleet as aforesaid, and notwithstanding the said John Wybourn was such prisoner belonging to the said prison of the Fleet as aforesaid, and as such prisoner ought to have surrendered himself to the keeper of the said prison, so as to have become an actual prisoner, and within the walls of the said prison, within the said twenty-eight days next after the giving of such notice of the repair of the said prison as aforesaid, according to the directions of the aforesaid statute in such case made and provided, and notwithstanding the said damages so recovered by the said John Christie aforesaid, during the aforesaid twenty-eight days, were and still are wholly unpaid and unsatisfied to him the said John Christie; yet he the said John Wybourn did not within the said twenty-eight days next after such notice given in the London Gazette of the repair of the said prison of the Fleet as aforesaid, surrender himself to the keeper of the prison so as to become an actual prisoner, and within the walls of such prison, according to the directions of the aforesaid statute in such case made and provided, but wholly refused and omitted so to do, and staid and continued at large out of the said prison, and out of the custody of the warden or keeper thereof, after the end and expiration of the said twenty-eight days next after the giving of such notice of the repair of the said prison of the Fleet as aforesaid, without the leave and licence, and against the will of the said John Christie, and thereby escaped and went at large from and out of the said prison, and out of the custody of the said warden or keeper thereof, otherwise than as in the said plea of the said John Wybourn by him above pleaded by way of rejoinder as aforesaid is alleged, and in manner and form as the said John Christie hath above in his said plea so pleaded by way of reply as aforesaid alleged, to wit, at Westminster aforesaid; and this he the said John Christie is ready to verify: wherefore as before he prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detention of the same, to be adjudged to him, &c.

WM. BALDWIN.

Rebutter,

&c.

And the said John Wybourn says, that the said John Christie, by reason of any thing by him above in surrejoinder alleged, ought not to have or maintain his aforesaid action thereof against him,

SURREBUTTER, AND PLEA, FRESH PURSUIT, &c.

him, because he says, that the said J. Wybourn, by the leave and licence of the said John Christie to him for that purpose first given and granted, to wit, at Westminster aforesaid, omitted to surrender himself to the keeper of the said prison within the said twenty-eight days, and staid and continued at large out of the said court of the custody of the warden or keeper thereof, after the end and expiration of the said twenty-eight days next after the giving of such notice of the repair of the said prison of the Fleet as aforesaid; and this, &c. whereof he prays judgment, &c. if, &c.

GEORGE WOOD.

And the said John Christie, as to the aforesaid rebutter of the said J. Wybourn, says, *precludi non*; because protesting that the said J. Wybourn omitted to surrender himself to the aforesaid prison of the Fleet within the said twenty-eight days next after the giving of such notice of the repair of the said prison as aforesaid, and staid and continued at large out of the said prison, and out of the custody of the warden or keeper thereof, after the end and expiration of the said twenty-eight days next after the giving of such notice of the repair of the said prison as aforesaid, without the leave or licence, and against the will of the said J. Christie, as he the said J. Christie hath in his aforesaid surrejoinder alledged; for surrebutter in this behalf he the said J. Christie says, that the said J. Wybourn did not omit to surrender himself to the said prison within the said twenty-eight days, nor staid and continued at large out of the said prison, and out of the custody of the warden or keeper thereof, after the end and expiration of twenty-eight days next after the giving of such notice of the repair of the said prison of the Fleet as aforesaid, by the leave and licence of the said J. Christie to him for that purpose first given and granted, as the said J. Wybourn hath above in his aforesaid rebutter alledged; and this he the said J. Christie prays may be enquired of by the country, and the said J. Wybourn doth the like, &c. therefore, &c.

V. LAWES.

B. THOMAS, ESQUIRE, MARSHALL, &c. } AND the said B. Plea to a
at suit of } in his own proper
 DALWOOD. } person, comes and de-
 fends the wrong and injury, when, &c. and saith, that he doth not owe to the said John the said sum of twenty-three pounds fifteen shillings in said bill mentioned and above demanded, or any part thereof, in manner and form as the said John hath above thereof complained against him the said B.; and of this he puts himself upon the country, &c.: And for further plea in this behalf said B. by leave of, &c. *actio non*; because he says, that after the commitment of said H. H. to the custody of the said B. at the suit of the said John and M. his wife in form aforesaid, to wit, on, &c. the said H. H. being then in a certain prison called the King's Bench Prison, situate in the parish of St. George the Martyr, in

PLEA—FRESH PURSUIT AND RECAPTION.

the county of S. under the custody of the said B. at the suit of the said John and M. his wife as aforesaid, he the said H. H. afterwards, to wit, on, &c. at, &c. by force and arms broke the said prison, and out of said prison, and out of custody of said defendant, against the will of said defendant, and without the knowledge of said defendant fled and escaped to places to said defendant unknown: And the said defendant further saith, that before the day of exhibiting of the bill of the said John against him the said B. and before said B. had any notice of said escape, to wit, on, &c. at, &c. the said H. H. unto the prison aforesaid privily returned, and continually after such his return hitherto said H. H. in the prison, under the custody of the said B. at the suit of the said John and M. his wife, hath been detained and is yet detained by said Benjamin, which said escape of said H. H. out of said prison, and out of custody of said B. so as aforesaid made, is the same escape for which the said John hath above declared against him said B.; and this, &c. wherefore, &c. if, &c.

And for further plea in this behalf, the said B. by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said John ought not to have his aforesaid action thereof maintained against him the said Benjamin, because he says, that after the commitment of the said H. H. to the custody of the said B. at the suit of the said John and Mary his wife in form aforesaid made, to wit, on, &c. the said H. H. being then in a certain prison called the King's Bench Prison, situate in, &c. under the custody of the said B. at the suit of the said John and M. his wife as aforesaid; he the said H. H. afterwards, to wit, on, &c. by force and arms broke the said prison, and out of the said prison, and out of the custody of the said William, against the will of the said B. and without the knowledge of the said B. fled and escaped to places to the said B. unknown: And the said B. further says, that immediately after the said escape of the said H. H. as aforesaid made, to wit, on, &c. he the said B. made fresh pursuit for the retaking of the said H. H. to wit, at, &c. and he the said B. made and continued that pursuit from thence from place to place, and from county to county, until he said B. afterwards, and before the exhibiting the bill of the said J. against him the said B. to wit, on, &c. retook the said H. H. upon that pursuit, to wit, at, &c. and again had and detained the said H. H. in prison under the custody of him said B. by virtue of the said commitment at the suit of the said J. and M. his wife, and from thence hitherto hath detained, and still doth detain the said H. H. under his custody for the same cause, which is the same escape of the said H. H. whereof the said J. hath above complained against him; and this, &c.; wherefore, &c. if, &c.

J. MORGAN.

See Statute 8. 9. W. 3. c. 27. f. 6.

DALWOOD

REPLICATION—TRAVERSING—REJOINDER.

DALWOOD
against

THOMAS, ESQUIRE, MARSHALL, &c. } And as to the said
plea of the said B. by
him secondly above
pleaded in bar, the said John protesting that said plea in man-
ner and form above pleaded, and the matters therein contained
are insufficient in law to bar the said John from having and main-
taining his aforesaid action; to which said plea, in manner and
form above pleaded, he said John is not under any necessity nor
obliged by the law of the land to answer; nevertheless for replica-
tion in this behalf said J. says, that said B. at the said time in said de-
claration mentioned, at Westminster aforesaid, suffered and per-
mitted the said H. H. to escape out of his custody, and freely to go
at large wheresoever he would, in manner and form as said J.
hath above thereof complained against him; without this, that said
H. H. with force and arms broke said prison, and out of said pris-
on, and out of the custody of said B. against the will of said B.
and without the knowledge of said B. fled and escaped to places
to said B. unknown, in manner and form as said B. hath above in
his said plea alledged; and this said J. is ready to verify: where-
fore he prays judgment and his damages by him sustained on oc-
casion of the premises aforesaid to be adjudged to him, &c. : And
as to plea of said B. by him thirdly above pleaded in bar, he said
J. protesting that said H. H. did not by force and arms break said
prison, and out of said prison, and out of custody of said B. against
the will of said B. and without the knowledge of said B. flee
and escape to places to said B. unknown, in manner and form as
said B. hath in and by his said last-mentioned plea *alledged* : For re-
plication in this behalf said J. says, that said B. at said time in
said declaration mentioned, at Westminster aforesaid, suffered and
permitted the said H. H. to escape out of his custody, and freely
to go at large wheresoever he pleased, in manner and form as
said J. hath above thereof complained against him; without this,
that immediately after said escape of said H. H. as aforesaid, he
said B. made fresh pursuit for the retaking of said H. H. and made
and continued that pursuit from thence and from place to place, and
from county to county until he said B. afterwards retook said H. H.
upon that pursuit, and again had and detained the said H. H. in
prison, under the custody of said B. in manner and form as
said B. hath above by his last-mentioned plea *alledged*; and this,
&c. wherefore, &c. and his damages by occasion of the premises
to be adjudged to him, &c.

And said B. as to said plea by said J. pleaded by way of reply
to said plea of said B. secondly above pleaded in bar, says as be-
fore, that, &c. (so copy first traverse to the word *alledged* in
Italic); and of this he the said B. puts himself upon the coun-
try, &c. : And the said B. as to said plea above by said J. pleaded
by way of reply to said plea of said B. thirdly above pleaded in
bar, says as before, that, &c. (so copy said traverse to the word
alledged

Replication
2d, protesting
to sustain
plea. Replication
that prisoner
escaped through
defendant's
negligence
traverse
escape without
knowledge

To be proven
that prisoner
not escape
without
defendant's
knowledge
Replication, de-
fendant
suffered
him to escape
and traverse
Replication

Traverse

Rejoinder
Issue on
verdict

alleged in *Italic*) ; and of this he the said B. puts himself upon the country, &c. J. MORGAN.

Hilary Term, 32. Geo. III. In the Common Pleas.

Bill against the warden of the Fleet, in debt for the negligent escape of a prisoner charged in execution on a judgment in an action of *assumpsit* in B. R. and removed by *habeas corpus* to the Fleet, and there committed under the same execution.

HERETOFORE, as it appears in the term of St. Michael last past, on the 756th Roll, it is thus contained:—London, to wit. Be it remembered that on the seventh day of November in the same term, William Alsept came into court by James Collins his attorney, and exhibited to the justices of our lord the king here his certain bill against John Eyles, esquire, warden of his majesty's prison of the Fleet, present here in court in his own person, the tenor of which said bill follows in these words : To the justices of our lord the king of the bench, London, to wit. William Alsept, by James Collins his attorney, complains of John Eyles, esquire, warden of his majesty's prison of the Fleet, present here in court in his own proper person, of a plea that he render to the said William one hundred and thirty-five pounds ten shillings of lawful money of Great Britain, which he owes to and unjustly detains from him : for that whereas he the said William heretofore, that is to say, in Trinity Term, in the thirty-first year of the reign of our lord the now king, in the court of our said lord the king, before the king himself (the court then and still being held at Westminster, in the county of Middlesex), by the consideration of the said court recovered against one Francis Gabriel, otherwise Francis Gabrel de Verteillac (by the name of François Gabrel de Verteillac) one hundred and thirty-five pounds ten shillings, which in and by the said court were then and there adjudged to the said William for his damages which he had sustained as well on occasion of the not performing of certain promises and undertakings thentofore made by the said F. G. otherwise, &c. to the said William, as for his costs and charges by him about his suit in that behalf expended, whereof the said F. G. otherwise, &c. was convicted (that is to say, by the name of, &c.), as by the record and proceedings thereof remaining in the said court of our lord the king, before the king himself, to wit, at Westminster aforesaid, more fully appears ; which said judgment still remains in its full force, strength, and effect, in no way reversed, set aside, paid off, or satisfied : And the said William in fact further saith, that after the recovery of the said judgment, to wit, on Wednesday next after three weeks of the Holy Trinity, in Trinity Term in the thirty-first year aforesaid, the said F. G. otherwise, &c. being then personally present in the said court of our lord the king, before the king himself, was at the prayer of the said William committed by the said court, that is to say, by the name of, &c. into the custody of the marshal of the marshalsea of our said lord the king, before the king himself, in execution for the damages aforesaid at the suit of the said William, there to remain until he the said F. G. otherwise, &c. should satisfy the said William the said damages, as by the record of the said commitment

FOR A NEGLIGENT ESCAPE.

mitment remaining in the said court of our lord the king before the king himself, at Westminster aforesaid, more fully appears: And the said William further saith, that the said F. G. otherwise, &c. afterwards and whilst he was in custody and in execution as aforesaid, to wit, on the twentieth day of July, in the year of Our Lord 1791, was, by virtue of his said majesty's writ of *habeas corpus cum causâ* issuing out of the court of our lord the king of the bench here, directed to the said marshal of the marshalsea of our said lord the king, before the king himself, brought up before Sir H. Gould, knight, then and still being one of the justices of our said lord the king of the bench, at his chambers situate in Serjeant's-Inn, Chancery-lane, in London, aforesaid, and by the return of the said writ of *habeas corpus cum causâ*, the said F. G. otherwise, &c. was then and there charged (among other things) with the said commitment in execution at the suit of the said William for the said one hundred and thirty-five pounds ten shillings; and thereupon the said F. G. otherwise, &c. was by the said Sir H. Gould, knight (so being such justice as aforesaid, the said F. G. otherwise, &c. then being before the said justice on the occasion aforesaid), committed to the custody of the warden of his majesty's prison of the Fleet, charged in execution for the damages aforesaid, as by the record of the said writ of *habeas corpus cum causâ*, and the return thereof, and the aforesaid commitment thereupon remaining, filed in the said court of our lord the king of the bench here more fully appears; by virtue of which said last-mentioned commitment, the said John Eyles (who before and at the time of the said last-mentioned commitment, was, and ever since hath been, and still is warden of the said prison of the Fleet) on the day and year last aforesaid, at London aforesaid, to wit, in the parish of St. Bridget, otherwise St. Brides, in the ward of Farringdon Without, received into, and then and there had the said F. G. otherwise, &c. in his custody in the said prison, in execution for the said damages at the suit of the said William, and there kept and detained him in execution for the said damages in the said prison, until he the said J. E. not regarding the duty of his said office afterwards, to wit, on the twenty-seventh day of October, in the year of Our Lord 1791, at London aforesaid, in the parish and ward aforesaid, wrongfully, unlawfully, and without the leave and licence, and against the will of the said William, permitted and suffered the said F. G. otherwise, &c. to escape and go at large from and out of the said prison, and from and out of the custody of the said J. E. (he the said J. E. then and still being warden of the said prison of the Fleet, and the said William then and yet being wholly unsatisfied, the damages aforesaid, and every part thereof); by reason of which said premises an action hath accrued to the said William, to demand and have of and from the said J. E. so being warden of the said prison of the Fleet, by the said one hundred and thirty-five pounds ten shillings above demanded; yet the said J. E. (although often requested,

&c.) hath not yet rendered the said one hundred and thirty-five pounds ten shillings above demanded, or any part thereof to the said William, but hath hitherto wholly refused, and still doth refuse, to the damage of the said William of twenty pounds; and therefore he brings his suit, &c. Pledges, &c. V. LAWES.

lea 1st, nil de-
bet; 2d, that de-
ndant's is a pa-
nt office held
at the king's will,
that it is of right
ought to be re-
paired by Go-
vernment, and
not by defend-
ant; that the
prisoner conspir-
ed with two
other foreigners,
and slinging a
rope ladder over
the wall, sus-
pended from a
neighbouring
house, thereby
effected the es-
cape without
any negligence of
defendant, who
made fresh pur-
suit of the par-
ties, but they
fled to France.

And the said John, by T. H. his attorney, comes and defends the wrong and injury, when, &c. and prays leave to imparl there- to here until Monday next after eight days of St. Hilary, and he hath it, &c.; at which day cometh here as well the said William by his attorney, as the said John by his said attorney, and the said William prayeth that the said John may answer his said bill; and the said John, by his said attorney as before, defends the wrong and injury, when, &c. and says, that he does not owe to the said William the said one hundred and thirty-five pounds ten shillings above demanded, or any part thereof, in manner and form as the said William hath above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea in this behalf the said John, by leave of the court here for this purpose first had and obtained, according to the form of the sta- tute in such case made and provided, says, that the said William ought not to have or maintain his aforesaid action thereof against him, because he saith, that by letters patents of our lord the now king, under the great seal of Great Britain, made and bearing date at Westminster before the said escape in the said declaration mentioned, to wit, on the fifth day of March, in the first year of his majesty's reign; which said letters patent the said John now brings into court here, our said lord the king did give and grant unto him the said John (among other things) the office of war- den or keeper of the said prison and gaol, for and during the will and pleasure of his said majesty, his heirs, and successors, as by the said letters patent (reference being thereto had) will more fully appear; by virtue of which said letters patent the said John entered into, and became and was possessed of the said office of war- den or keeper of the said prison of the Fleet, and so from thence hath remained and continued, to wit, at London aforesaid, in the parish and ward aforesaid: And the said John in fact further saith, that the said prison from the time of the granting of the said office of war- darden or keeper of the said prison of the Fleet unto him the said John as aforesaid, hitherto has been, and of right ought to have been, and itill of right ought to be repaired and maintained by and at the expence of his majesty, and not by and at the expence of him the said John: And the said John in fact further saith, that being such warden or keeper of the prison of the Fleet as afore- said, and the said F. G. otherwise, &c. in the said declaration mentioned; having been and being so committed to the custody of him the said John, as in the said declaration in that behalf is men- tioned, he the said John, by himself, his deputies, and servants, at and of and belonging to the said prison, and whilst the said

OF WALLS, CONSPIRACY, FRESH PURSUIT.

F. G. otherwise, &c. continued in his custody as such prisoner, did take all due and proper care in his power to prevent the escape of the said F. G. otherwise, &c. from and out of the said prison; but the said John in fact further saith, that notwithstanding such care, the said F. G. otherwise, &c. whilst he was such prisoner as aforesaid, and before his escape from the same in this said declaration, and as hereinafter is mentioned, to wit, on the said twenty-seventh day of October, in the year of Our Lord 1791, at London aforesaid, in the parish and ward aforesaid, unlawfully and without the consent, privity, or knowledge of the said John, or any or either of his deputies or servants at the said prison of or belonging to the same, did combine, conspire, confederate, and agree together with two other persons, whose names are at present unknown to the said John, but the surname of one of them is Valmer, and the other of them Imber, unlawfully to break the said prison by and in behalf of the said F. G. otherwise, &c. and to effect his escape from and out of the same: And the said John in fact further saith, that the said unlawful combination, conspiracy, confederacy, and agreement, having been so entered into by and between the said F. G. otherwise, &c. and the said two other persons of the surnames of Valmer and Imber, in pursuance of such unlawful combination, conspiracy, confederacy, and agreement, and in order to effect the escape of the said F. G. otherwise, &c. from and out of the said prison as aforesaid, afterwards, and just before the said escape in the said declaration mentioned, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, did unlawfully, secretly, and clandestinely, and without the consent, privity, or knowledge of, or any negligence or default in the said John, or any or either of his deputies or servants at the prison, or of or belonging to the same, sling, cast, or throw, and cause and procure to be then and there slung, cast, and thrown over and across a certain external wall of the said prison, contiguous and next adjoining to a certain house, part of certain premises situate in London aforesaid, commonly called and known by the name of the Bell Savage Inn, not then and there belonging to the said prison, a certain rope ladder then and there being fastened to and suspended from one of the windows of the said house so contiguous and adjoining to the said prison as aforesaid, overlooking the said wall of the said prison, for the purpose of thereby then and there effecting the escape of the said F. G. otherwise, &c. from and out of the said prison, from and over the aforesaid wall thereof; and the said F. G. otherwise, &c. did thereby and by means thereof, and in consequence of the insufficient height of the said wall of the said prison, then and there, and at the said time when, &c. secretly, privately, and clandestinely escape from and out of the said prison, over the said wall thereof, without the consent of, and not from any negligence or default in the said John, or any or either of his deputies or servants at the said prison, or of or belonging to the same: And the said John further saith, that imme-

diately after the said escape of the said F. G. otherwise, &c. to wit, on the day and year last aforesaid, he the said John made fresh and diligent pursuit, and used all possible endeavours to retake the said F. G. otherwise, &c. and also to apprehend and bring to justice the said two other persons of the surnames of Valmer and Imber, to wit, at London aforesaid, in the parish and ward aforesaid, and that he the said John made and continued such pursuit from thence continually from place to place; but the said John in fact further saith, that notwithstanding such pursuit, he the said F. G. otherwise, &c. together with the said two other persons of the said surnames of Valmer and Imber, afterwards, and before the said F. G. otherwise, &c. could be retaken, or the said two other persons of the said surnames of Valmer and Imber could be apprehended, and also before the exhibiting of the bill of the said William against him the said John, to wit, on the day and year last aforesaid, fled and departed from this kingdom into certain foreign parts, out of the reach of the process of any of the courts of this country, and there from thence continually hitherto hath remained and continued, and still are resident and abiding: And the said John in fact further saith, that at the time of the said unlawful combination, conspiracy, confederacy, and agreement herein mentioned, and also at the time of the said escape of the said F. G. otherwise, &c. he the said F. G. otherwise, &c. and the said two other persons of the surnames of Valmer and Imber were aliens, and each and every of them was and still is an alien, born out of the allegiance of our lord the now king, to wit, in the said kingdom of France of parents then and there being subjects of that kingdom, and that they the said F. G. otherwise, &c. and the said two other persons of the surnames of V. and I. at any of the times aforesaid had not, nor had, nor have, nor hath any or either of them any lands, tenements, or other property in this kingdom, whereby they could or can be made amenable to the laws or justice of this country, for or in respect of the said escape of the said F. G. otherwise, &c.; and the said John in fact further saith, that the said escape of the said F. G. otherwise, &c. in that plea mentioned, and the said escape of the said F. G. otherwise, &c. in the said declaration mentioned, were and are one and the same identical escape, and not other or different escapes, and that he the said John at the time of the said escape was not nor is warden of the said prison of the Fleet, otherwise than in respect of the aforesaid letters patent, and under and by virtue of the same, and this he is ready to verify; wherefore he prays judgment if the said William ought to have or maintain his aforesaid action thereof against him,

gd Plea, that defendant was patient at will of the gaol, &c. as in test, that the prison walls were not sufficiently high, whereby prisoner escaped, as

&c.: And for further plea in this behalf, the said John by like leave, &c. *alio non*; because he saith, that by letters patent of our lord the now king, under the great seal of Great Britain, made and bearing date at Westminster, before the said escape in the said declaration mentioned, to wit, on the fifth day of March, in the sixth year of his said Majesty's reign (which said letters patent the said John now brings into court here), our said lord the

before, and defendant made fresh pursuit.

king

king did give and grant to him the said John, among other things, the office of warden or keeper of the said prison and gaol of the Fleet, in the said declaration mentioned, and the prisoners committed or to be committed to the said prison or gaol for and during the will and pleasure of his said majesty, his heirs, and successors as by the said letters patent (reference being thereto had) will more fully appear, by virtue of which said letters patent the said John entered into, and became and was possessed of the said office or warden or keeper of the said prison of the Fleet, and so from thence hitherto hath remained and continued, to wit, at London aforesaid, in the parish and ward aforesaid; and the said John in fact further saith, that from the time of the granting of the said office of warden or keeper of the said prison of the Fleet unto him the said John as aforesaid, hitherto the said prison hath been, and of right ought to have been, and still of right ought to be maintained and repaired by and at the expence of his said majesty, and not by and at the expence of him the said John; and the said John in fact further saith, that being such warden or keeper of the said prison of the Fleet as aforesaid, and the said F. G. otherwise, &c. in the said declaration mentioned, having been, and being so committed into the custody of the said John, as in the said declaration is in that behalf mentioned, he the said John by himself, his deputies, and servants, at and of and belonging to the said prison, did, whilst the said F. G. otherwise, &c. remained in the custody of him the said John as such prisoner as aforesaid, take all due and possible care in his power to prevent the escape of him the said F. G. otherwise, &c. from and out of the said prison; but the said John in fact further saith, that the said gaol or prison of the Fleet was not before, nor at the time of the said escape of the said F. G. otherwise, &c. sufficient to confine, keep, and detain the prisoners committed to, and then and there being in the custody of him the said John in the said prison, and to prevent their escape from and out of the same; but on the contrary, the said prison was then and there insufficient for these purposes in this, to wit, that a certain external wall thereof was then and there insufficient in height for the purposes aforesaid, and was then and there overlooked by a certain window of and belonging to a certain building thereto contiguous and adjoining, and not then and there being part of or belonging to the said prison; and that by means and in consequence thereof, just before the said time, when, &c. to wit, on the same day and year in the said declaration mentioned, a certain rope ladder was secretly, privately, and clandestinely, and without the consent, privity, or knowledge of, or any negligence or default in the said John, or any or either of his deputies and servants at the said prison of or belonging to the same, conveyed from the said window so then and there overlooking the said wall of the said prison, and of and belonging to the said building so contiguous and adjoining thereto as aforesaid, into the said prison unto the said F. G. otherwise, &c. for the purpose of effecting, and in order to his then and there effecting his escape from and out of the said

REPLICATION.—DE INJURIA, &c.

said prison, and the said F. G. otherwise, &c. did thereby, and by means and in consequence of the insufficient height of the said walls of the said prison, then and there at the said time, when, &c. secretly, privately, and clandestinely escape from and out of the said prison, over the said wall thereof, without the consent, privity, or knowledge of, or any negligence or default in the said John, or any or either of his deputies or servants at the said prison, or of or belonging to the same; and the said John further saith, that immediately after the said escape of the said F. G. otherwise, &c. to wit, &c. on the day and year last aforesaid, he the said John made fieth and diligent pursuit, and used all possible endeavours to retake the said F. G. otherwise, &c. to wit, at London aforesaid, in the parish and ward aforesaid, and that he the said John made and continued such pursuit from thence continually from place to place; but the said John in fact further saith, that notwithstanding such pursuit, he the said F. G. otherwise, &c. afterwards, and before the said F. G. otherwise, &c. could be retaken, and also before the exhibiting of the bill of the said William against the said John, to wit, on the day and year last aforesaid, fled and departed from this kingdom into certain foreign parts, out of the reach of the process of any of the courts of this country, to wit, into the kingdom of France, and then and there from thence continually hitherto hath remained and continued, and still is resident and abiding; and the said John in fact further saith, that at the time of the said escape of the said F. G. otherwise, &c. was and still is an alien, born out of the allegiance of our lord the now king, to wit, in the said kingdom of France of patents then and there being subjects of that kingdom, and that he the said F. G. otherwise, &c. at any or either of the times aforesaid had not, nor hath he any lands, tenements, or other property in this kingdom, whereby he could or can be made amenable to the laws of justice of this country for or in respect of the said escape of him the said F. G. otherwise, &c.: And the said John in fact further saith, that the said escape of the said F. G. otherwise, &c. in this plea mentioned, and the said escape of him the said F. G. otherwise, &c. in the said declaration mentioned, were and are one and the same identical escape, and not other or different escapes, and that he the said John at the time of the said escape was not nor is warden of the said prison of the Fleet, otherwise than in respect of the aforesaid letters patent, and under and by virtue of the same; and this he is ready to verify, &c.

V. LAWES.

And the said William, as to the said plea of the said John, by him first above pleaded in bar, and whereof he puts himself upon the country, doth so likewise; and as to the plea of the said John by him secondly above pleaded in bar, the said William says, that he by reason of any thing in that plea alledged, ought not to be barred from having or maintaining his aforesaid action against the said

*Replication, 1st
issue on 2d plea.
2d. That de
fendant, de in
juria, &c. per-
mitted the es-
cape, waiving
his negligence.*

said John, because protesting that from the time of the granting of the said office of warden or keeper of the said prison, the said prison hath not been, and of right ought not to have been, and still of right ought not to be maintained and repaired by and at the expence of his majesty, and not by and at the expence of the said John, as in the second plea is alledged, protesting also that the said John by himself, his deputies, and servants at and of and belonging to the said prison, did not, whilst the said F. G. otherwise, &c. continued in his custody, take all due and possible care in his power to prevent the escape of the said F. G. otherwise, &c. from and out of the said prison in manner and form as the said John hath in his said second plea above alledged, protesting also that the said persons of the surnames of V. and J. did not, without any negligence or default in the said John, or any or either of his deputies or servants at the said prison, or of or belonging to the same, sling, cast, and throw, and cause and procure to be slung, cast, and thrown the said rope ladder over and across the said external wall of the prison in manner and form as the said John hath in his said second plea above alledged; nevertheless for replication in this behalf the said William saith, that the said J. E. on the same day and year in the said declaration in that behalf mentioned, at London aforesaid, in the parish and ward aforesaid, of his own wrong, wrongfully, unlawfully, and without the leave or licence, and against the will of the said William, permitted and suffered the said F. G. otherwise, &c. to escape and go at large from and out of the said prison, and from and out of the custody of him the said J. E. in manner and form as the said William hath in and by his said declaration above complained against the said J. E. without this that the said F. G. otherwise, &c. at the said times when, &c. did escape from and out of the said prison, without any negligence or default in the said John, or any or either of his deputies or servants at the said prison of or belonging to the same, in manner and form as the said John in and by his said plea, secondly above pleaded in bar, hath alledged, and this he the said William is ready to verify; wherefore he prays judgment and his debt aforesaid, together with his damages, by reason of the detaining thereof, to be adjudged to him, &c.: And as to the plea of the said John, by him lastly above pleaded in bar, he the said William says, that he by reason of any thing in that plea alledged, ought not to be barred from having and maintaining his said action against the said John, because protesting that from the time of granting the said office of warden or keeper of the said prison of the Fleet unto him the said John, hitherto the said prison hath not been, and of right ought not to have been, and still of right ought not to be maintained and repaired by and at the expence of his said majesty, and not by and at the expence of the said John, as in the said plea is alledged, protesting also that the said John by himself, his deputies, and servants, at and of and belonging to the said prison, did not, whilst the said F. G. otherwise

To 3d plea, same as last.

wife

wife, &c. remained in the custody of him the said John as such prisoner as aforesaid, take all due and possible care in his power to prevent the escape of the said F. G. otherwise, &c. from and out of the said prison in manner and form as the said John hath in his said last plea alledged; protesting also, that the said rope ladder, in the said plea mentioned, was not without any negligence or default in the said John, or any or either of his deputies or servants at the said prison, or of or belonging to the same, conveyed into the same prison unto the said F. G. otherwise, &c. in manner and form as the said John hath in his said last plea alledged; nevertheless for replication in this behalf, the said William saith, that the said J. E. on the same day and year in the same declaration in that behalf mentioned, at London aforesaid, in the parish and ward aforesaid, of his own wrong, wrongfully, and without the leave or licence, and against the will of the said William, permitted and suffered the said F. G. otherwise, &c. to escape and go at large from and out of the said prison, and from and out of the custody of him the said J. E. in manner and form as the said William hath in and by the said declaration above thereof complained against him the said John, without this, that the said F. G. otherwise, &c. did at the said time, when, &c. escape from and out of the said prison, without any negligence or default in the said John, or any or either of his deputies or servants at the said prison or of belonging to the same, in manner and form as the said John in his said plea lastly above pleaded in bar hath alledged; and this he is ready to verify; wherefore he prays judgment, and his debt aforesaid, together with his damages by reason of the defending thereof, to be adjudged to him, &c.

S. LE BLANC.

Rejoinder, taking issue on each traverse.

And the said John, as to the said plea of the said William, by him above pleaded by way of reply to the said plea of the said John, by him secondly above pleaded in bar, saith, that notwithstanding any thing in the said plea so pleaded in reply as aforesaid alledged, the said William ought not to have or maintain his aforesaid action thereof against him the said John, because he the said John as before saith, that the said F. G. otherwise, &c. did escape from and out of the said prison without any negligence or default in the said John, or any or either of his deputies or servants at the said prison, at or of or belonging to the same, in manner and form as the said John in and by his said plea, secondly above pleaded in bar, hath alledged; and of this he puts himself upon the country, and the said William doth the like, &c.: And the said John, as to the said plea of the said William by him above pleaded by way of reply to the said plea of the said John, by him lastly above pleaded in bar, saith, that notwithstanding any thing in the said plea so pleaded in reply as last aforesaid, the said William ought not to have or maintain his aforesaid action thereof against him the said John, because he the said John saith, that he the said F. G. otherwise, &c. at the said time, when, &c. did escape from and out of the said prison, bath

without any negligence or default in the said John, or any or either of his deputies or servants at the said prison, or of or belonging to the same, in manner and form as the said John in his said plea lastly above pleaded in bar hath alledged; and of this he puts himself upon the country, and the said William doth the like, &c. therefore, &c.

Trinity Term, 31. Geo. III.

ROSCOW
against

ANDERSON AND COOMBE,
late Sheriff of Middlesex.

MIDDLESEX. &c. &c.

that plaintiff heretofore, to wit, in Trinity Term, in the thirty-first year of the reign of our lord the king, in the court of our lord the king, before the king himself, the said court then being at Westminster, in the county of Middlesex, by the consideration of the said court recovered against William Murray, late of Westminster, in the county of Middlesex, esquire, commonly called lord William Murray, one hundred and eighty-five pounds, which in the same court were then and there adjudged to plaintiff, for his damages which he had sustained as well by reason of the non-performance of certain promises and undertakings before that time made by the said William Murray to plaintiff, as for his costs and charges by him about his suit in that behalf expended, whereof the said William Murray was convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before the king himself, at Westminster, more fully appears; that plaintiff for obtaining execution of the said judgment, afterwards, to wit, on the seventh day of September, in the thirty-second year of the reign of our said lord the now king, sued and prosecuted out of the said court of our lord the king, before the king himself, at Westminster aforesaid, a certain writ of our said lord the king of *capias ad satisfaciendum* upon the said judgment, directed to the sheriff of the said county of Middlesex, by which said writ our said lord the king commanded the said sheriff that he should take the said William Murray, if he should be found in his bailiwick, and him safely keep, so that he might have his body before our said lord the king, in eight days of St. Hilary, wheresoever our said lord the king should then be in England, to satisfy plaintiff the said one hundred and eighty-five pounds, and that he should have there that writ, which said writ afterwards, and before the return thereof, to wit, on the said seventh day of December, in the said thirty-second year of the reign of our said lord the king, at Westminster aforesaid, was delivered to defendants, who then and from thenceforth until and at the return of the said writ were sheriff in the said county of Middlesex, to be executed in due form of law, by which said writ, defendants so being sheriff of the said county as aforesaid, afterward and before the return of the said writ, to wit,

Declaration in debt against the sheriff of Middlesex, for suffering a prisoner in execution at plaintiff's suit to go at large after the issuing, and before the return of the writs.

Judgment in case for 185*l*.

December,
32. Geo. 3.
ca. 3*a*.

Returnable in eight days of St. Hilary.

on

Defendant in
execution for
1831.

2d Count.

23d January
1792, *ca. fa.*

Returnable in
eight days of
the Purification.

on the same day and year last aforesaid, at Westminster aforesaid, had the said William Murray in their custody in execution for the said one hundred and eighty-five pounds; nevertheless defendants so being such sheriff as last aforesaid, not regarding the duty of their said office, afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, without the licence and against the will of him the said plaintiff, and without any legal warrant or authority whatsoever, permitted and suffered the said William Murray, so being in their custody as aforesaid, to escape out of their custody, and to go at large wheresoever he would, plaintiff not being then or yet satisfied the said one hundred and eighty-five pounds, or any part thereof, by reason whereof an action hath accrued to plaintiff to demand and have of defendant the said one hundred and eighty-five pounds, parcel of the said three hundred and seventy pounds above demanded: That plaintiff heretofore, to wit, in Trinity Term, in the thirty-first year of the reign of our said lord the king, before the king himself, the said court then being at Westminster aforesaid, by the consideration of the said court recovered against William Murray, late of Westminster, in the county of Middlesex, commonly called lord William Murray, another sum of one hundred and eighty-five pounds, which in the same court were then and there adjudged to plaintiff for his damages which he had sustained, as well by reason of the non-performance of certain other promises and undertakings before that time made by the said William Murray to plaintiff, as for his costs and charges by him about his suit in that behalf expended, whereof the said William Murray was convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before the king himself, at Westminster, more fully appears; that plaintiff for the obtaining of execution of the said last-mentioned judgment afterwards, to wit, on the twenty-third day of January, in the thirty-second year of the reign of our said lord the king, sued and prosecuted out of the said court of our lord the king, before the king himself, at Westminster aforesaid, a certain writ of our said lord the king upon the said last-mentioned judgment directed to the sheriff of the said county of Middlesex, by which said writ our said lord the king commanded the said sheriff that he should take the said William Murray, if he should be found in his bailwick, and him safely keep, so that he might have his body before our said lord the king in eight days of the purification of the Blessed Virgin Mary, wheresoever our said lord the king should then be in England, to satisfy plaintiff's said last-mentioned one hundred and eighty-five pounds, and that he should have there that writ, which said last-mentioned writ afterwards and before the return thereof, to wit, on the said twenty-third day of January, in the said thirty-second year of the reign of our said lord the king, at Westminster aforesaid, was delivered to defendants, who then and from thenceforth until and at the return of the

the said writ were sheriff of the said county of Middlesex, to be executed in due form of law; by virtue of which said writ, defendants so being sheriff of the said county as aforesaid, afterwards and before the return of the same writ, to wit, on the same day and year last aforesaid, at W. aforesaid, had the said William Murray in their custody and execution for the said last-mentioned one hundred and eighty-five pounds; nevertheless defendants so being such sheriff as aforesaid, not regarding the duty of their said office, afterwards, to wit, on the same day and year last aforesaid, at W. aforesaid, without the licence and against the will of plaintiff, and without any legal warrant or authority whatsoever, permitted and suffered the said William Murray, so being in their custody as aforesaid, to escape out of their custody and to go at large whersoever he would, plaintiff not being then or yet satisfied the said last-mentioned one hundred and eighty-five pounds, or any part thereof, by reason whereof an action hath accrued to the said plaintiff to demand and have of defendant the said last-mentioned one hundred and eighty-five pounds, residue of the said two hundred and seventy pounds above demanded: Yet defendants have not, nor hath either of them, although often requested, paid the said two hundred and seventy pounds, or any part thereof to plaintiff, or in any wise satisfied him for the same, but the same to him to pay they, and each of them, have hitherto wholly refused, and still do refuse, to plaintiff's damage of twenty pounds.

Defendant
execution
185l.

Vide Hawkins at the suit of Plomer, and others, 2. Black. Rep. 1048.

Debt lies against the sheriff for an escape, to recover the whole debt and

damages, if defendant taken in execution be afterwards seen at large, for any, the shortest time even before the return of the writ.

1

FINES AND AMERCIAMENTS.

TOWN and BOROUGH of SOUTHWARK, to wit. The mayor, commonalty, and citizens of the city of London, by Stephen Hodson their attorney, complain against Thomas Holcomb, of a plea that he render unto them four pounds which he oweth to them, and unjustly detaineth, &c.; for that whereas the said mayor, commonalty, and citizens of the said city, on, &c. and long before were, and from thence hitherto have been and still are seized in their demesne as of fee of and in the manor called, &c. with the appurtenances, within the town and borough of Southwark, in the county of Surry, to wit, at the parish of St. S. in S. in the county of Surry, and within the jurisdiction of this court: And whereas the said mayor, commonalty, and citizens of the said city of London, and all those whose estate they then had, and now have of and in the manor aforesaid, with the appur-

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appurtenances for the time being, from the time whereof the memory of man is not to the contrary, have had and held, and have been accustomed to have and hold, and of right to have had and held, and still of right ought to have and hold a court-leet, or view of frankpledge within the said manor, of all the inhabitants of the same manor once in every year (that is to say), within one month next after the feast of St. Michael the Archangel, before their steward of the said court-leet or view of frankpledge for the time being or his deputy, as belonging and appertaining to the said manor, to wit, at the said parish of St. Saviour, in Southwark aforesaid, in the said county of Surry, and within the jurisdiction aforesaid: And the said mayor, commonalty, and citizens further say, that within the said manor there now is, and from time whereof the memory of man is not to the contrary there hath been a certain ancient and laudable custom there used and approved, to wit, that yearly and every year, at the court-leet or view of frankpledge of that manor, held within the manor aforesaid, within one month next after the feast of St. Michael the Archangel, or at any adjournment of the said court, the jurors inhabiting within the said manor there sworn and charged to enquire of and present those things that belong to that court-leet or view of frankpledge to be presented, do chuse, and during all the time aforesaid have been used and accustomed to chuse, and of right ought to chuse fourteen fit and proper persons of the inhabitants and residents within the said manor to be constables within and for the manor aforesaid, for one year then next following, and until other inhabitants and residents of the said manor are chosen and sworn into the said office in their place and stead respectively, which fourteen persons, and each of them so chosen as aforesaid, during all the time aforesaid, have taken upon themselves and exercised, and have used and been accustomed and ought to take upon themselves and exercise the said office for the said year, and until other inhabitants and residents of the said manor are chosen and sworn into the said office in their place and stead respectively, to wit, at the parish aforesaid, within the county and jurisdiction aforesaid: And the said mayor, commonalty, and citizens further say, that the said Thomas Holcomb on, &c. and long before has, and ever since hitherto hath been, and still is an inhabitant and resident within the said manor, to wit, at the parish of, &c. in the said county of Surry, and within the jurisdiction of this court, and then was and still is a fit and proper person to execute the office of one of the constables within and for the said manor: And the said mayor, commonalty, and citizens further say, that the said mayor, commonalty, and citizens being so seised of the manor aforesaid, with the appurtenances, in manner and form aforesaid; and the said Thomas Holcomb residing and inhabiting within the manor aforesaid, as aforesaid, and so being a fit and proper person for the purpose aforesaid, at a court-leet or view of frankpledge of the manor aforesaid, held at the Swan-tavern, in the High-street, in the parish of St. Saviour, Southwark, in the county of Surry, within

within and for the same manor, and within the jurisdiction of this court according to the custom of the same manor, within one month next after the feast of St. Michael the Archangel, in the year 1770 aforesaid, that is to say, on Wednesday the seventeenth day of October, in the year aforesaid, before Samuel Cox, esquire, deputy of Bamber Gascoyne, esquire, steward of the said mayor, commonalty, and citizens of the said court-leet or view of frankpledge, R. B. R. C. &c. &c. &c. then and there being good and lawful men, and refusing and inhabiting within the manor aforesaid, and within the jurisdiction of this court, were then and there sworn and charged according to the custom of the said manor, to enquire of and present all such things as were presentable in and belonging to that court to present: And thereupon afterwards, to wit, at the said court leet or view of frankpledge so held as aforesaid, the jurors aforesaid, according to the custom of the said manor did elect and chuse the said Thomas Holcomb to execute the office of one of the constables within and for the said manor for that year, and until another inhabitant and resiant of the said manor should be chosen and sworn into the said office in the place and instead of the said Thomas Holcomb, which said Thomas Holcomb then and there, and long before, and ever since was a resiant and inhabitant within the said manor, and within the jurisdiction of this court, and a fit and proper person to execute the said office; and the said mayor, commonalty, and citizens further say, that the said court-leet or view of frankpledge of the said manor so held as aforesaid was then and there, to wit, on the day and year last mentioned, adjourned to be held at the Swan tavern, in the High-street aforesaid, in the said parish of St. Saviour, in Southwark aforesaid, within and for the said manor, and within the jurisdiction of this court, at five o'clock in the afternoon of the same Wednesday, the seventeenth day of October, in the year aforesaid, before the said Samuel Cox, esquire, deputy of the said Bamber Gascoyne, esquire, steward of the said mayor, commonalty, and citizens of the said city of London, of the said court-leet or view of frankpledge, which said court-leet or view of frankpledge was afterwards held by adjournment according to the adjournment aforesaid, as is hereafter mentioned; and the said mayor, commonalty, and citizens further say, that afterwards, and before the holding of such court-leet or view of frankpledge by adjournment as aforesaid, to wit, on, &c. at, &c. in, &c. and within, &c. he the said Thomas Holcomb was duly summoned to attend at the said court-leet or view of frankpledge so to be held, and afterwards held by adjournment as hereafter mentioned, to come into the said court-leet or view of frankpledge and take on him the said office of constable, and to take the oath for the due execution of the same for the year ensuing; and the said mayor, commonalty, and citizens further say, that the said court-leet or view of frankpledge was held according to the adjournment aforesaid, afterwards, to wit, on, &c. at five o'clock in the afternoon of the same day, at the Swan-tavern aforesaid, in the High-street, within and for the

said manor (that is to say, in the parish of St. Saviour, in Southwark aforesaid, within the jurisdiction aforesaid) before the said S. C. esquire, deputy of Bamber Gascoyne, esquire, steward of the said court leet or view of frankpledge; and the said mayor, commonalty, and citizens further say, that the said Thomas Holcomb so having been duly summoned in manner and for the purpose aforesaid, was then and there, at the said court-leet or view of frankpledge so held by adjournment as aforesaid, solemnly called to come into the said court, and take upon him the said office of constable, and take the oath for the due execution of the same office for the year ensuing, but that the said Thomas Holcomb did not appear at the said court-leet or view of frankpledge held by adjournment as aforesaid, but then and there made default, in contempt of the said court, and to the evil example of others in like cases offending; and thereupon at the said court-leet or view of frankpledge so held by adjournment as aforesaid, upon the oaths of, &c. &c. &c. &c. honest and lawful men, then residing and inhabiting within the said manor, sworn and charged at the said court-leet or view of frankpledge, so held at the Swan-tavern, in the High-street, in Southwark, in the county of S. and within and for the said manor, and within the jurisdiction of this court, according to the custom of the said manor, within one month next after the feast of St. Michael the Archangel, that is to say, on the said Wednesday, &c. before the said S. C. esquire, deputy to the said B. G. esquire, then steward of the said mayor, commonalty, and citizens of the said city of London of their court aforesaid, to enquire of and present all such things as were presentable and belonging to the said court to present; it was by them the said jurors at the said court-leet or view of frankpledge so held by adjournment within and for the said manor, on, &c. presented that the said T. H. being a resiant and inhabitant in the manor aforesaid, and a fit and able person to serve the office of constable in and for the said manor, and having been duly summoned to appear at the said court, held by adjournment in and for the said manor, on, &c. at, &c. then and there to take upon him the said office of constable, and take his oath for the due execution of the same office for the year ensuing, had not appeared, but made default, in contempt of the said court, and to the evil example of others in like case offending, for which offence the said T. H. was then and there in and by the said court amerced, which said amerciament by J. W. J. W. and W. C. inhabitants and resiants within the same manor, then and there sworn and charged justly and duly to assere such amerciaments as should be presented in that court, was in the same court, assered to the sum of four pounds, to wit, at, &c. and within, &c. whereby an action hath accrued to the said mayor, &c. to wit, at, &c. and within, &c. to demand and have of and from the said T. H. the said four pounds above demanded: Yet the said T. H. although often requested, hath not paid the said four pounds, or any part thereof, to the said mayor, &c. or to any or either of them, but he to do this hath, &c.; their damage, &c.

J. MORGAN.
TOWN

NOT ATTENDING TO SERVE AS A JUROR.

TOWN AND BOROUGH OF SOUTHWARK, to wit: The mayor, &c. of the city of London, by Stephen Hodson their attorney, complain against Joshua Coats, in a plea that he render to them five pounds, which he oweth unto them and unjustly detains, &c. ; for that whereas the said mayor, &c. of the said city of London, on, &c. and long before were and from thence hitherto have been, and still are seised in their demesne as of fee of and in the manor called the great liberty manor, with the appurtenances, within the town and borough of Southwark, in the county of Surry, to wit, at the parish of St. S. Southwark, in the said county of S. and within the jurisdiction of this court: And whereas the said mayor, &c. of the said city of London, and all those whose estate they then had, and now have of and in the manor aforesaid, with the appurtenances for the time being, from the time whereof the memory of man is not to the contrary have had and held, and have been accustomed to have and hold, and of right ought to have had and held, and still of right ought to have and hold a court-leet or view of frankpledge within the said manor, of all the inhabitants and residents of the said manor once in every year, that is to say, within one month next after the feast of St. Michael the Archangel, before their steward of the said court-leet or view of frankpledge for the time being, or his deputy, as belonging and appertaining to the said manor, to wit, at the said parish of St. Saviour's, Southwark aforesaid, in the said county of S. and within the jurisdiction aforesaid: And the said mayor, &c. further say, that there now is, and from time immemorial there hath been a certain ancient and laudable custom used and approved of within the said manor, to wit, that yearly and every year, at a reasonable time previous to the holding of the said court-leet or view of frankpledge in each such respective year, the bailiff of the said mayor, &c. aforesaid for the time being, from time whereof the memory of man is not to the contrary, by virtue of a precept to him in writing for that purpose, among others, directed under the hand and seal of the steward of the said mayor, &c. of the court aforesaid for the time being, hath summoned, and hath been used and accustomed to summon, and of right ought to summon, and still of right ought to summon a sufficient number of fit and able persons of the inhabitants and residents within the said manor to appear at the then next court-leet or view of frankpledge to be held within and for the said manor, to be impannelled and sworn as jurors of the lord the king, or lady the queen, or lord and lady the king and queen for the time being, in and for the said manor for the year then next ensuing, and until other inhabitants and residents were chosen and sworn into such office in their place and stead respectively, which persons so summoned during all the time aforesaid have respectively attended at such next court-leet or view of frankpledge to be held in and for the said manor, and have been impannelled and sworn, and taken upon themselves respectively, and exercise the said office of a juror for the said year then next ensuing, and until other inhabitants and residents of the said manor were and are chosen and sworn into the

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office in their place and stead respectively, to wit, at the parish aforesaid, in Southwark aforesaid, in the said county of S. and within the jurisdiction of this court: And the said mayor, &c. further say, that the said Joshua Coats on, &c. and long before was, and ever since hitherto hath been and still is an inhabitant and resident within the said manor, to wit, at, &c. in, &c. and within, &c., and as such during all the time aforesaid did, and still doth owe, and during all the time aforesaid ought to have done, and still ought to do suit and service at the said court-leet or view of frankpledge, and during all the time aforesaid was and still is a fit and able person to serve as one of the jurors for our sovereign lord, the now king in and for the said manor, at the said court-leet or view of frankpledge, to wit, at the parish aforesaid, in Southwark aforesaid, in the county of S. aforesaid, within, &c. and the said mayor, &c. of the said city of London further say, that they the said mayor, &c. being so seised of the said manor with the appurtenances, in form aforesaid, and the said Joshua Coats so being an inhabitant and resident within the said manor, and a fit and able person to serve as one of the jurors of our sovereign lord the now king in and for the said manor, to wit, for the space of one year next ensuing the holding of the court-leet or view of frankpledge hereafter mentioned to be held in the year 1770, and until another fit and able person should be chosen in his place, a court-leet or view of frankpledge of the manor aforesaid was, in due manner, holden in and for the said manor within one month next after the feast of St. Michael the Archangel, in the year 1770, that is to say, on, &c. in, &c. at the Swan-tavern in the High-street, in the said parish of St. S. in Southwark, in the county of Surry aforesaid, and within, &c. before Samuel Cox, esquire, deputy of B. G. esquire, steward of the said mayor, &c. of the said city of London of this court, according to the custom aforesaid, before the holding of which said court public notice of the time and place of the holding of the said court was in due manner previously given within the said manor, and that previous to the holding of the said court-leet or view of frankpledge, and a reasonable time before the same was so held as aforesaid, to wit, on, &c. within the said manor, to wit, at the said parish of St. S. in Southwark, in the county of S. aforesaid, and within, &c. he the said Joshua Coats so being an inhabitant and resident of and within the said manor, and so owing suit and service at the said court-leet or view of frankpledge was duly summoned, to wit, by R. H. esquire, then and still being the bailiff of the said mayor, &c. of the said manor, by virtue of the precept of the said B. G. esquire, then and still being steward of the court aforesaid, to the said R. H. directed, for the purpose, among other purposes, of summoning a sufficient jury of good and lawful men of the said manor to enquire and present for our said lord the now king, at the said court-leet or view of frankpledge to be held, and afterwards so held on, &c. in and for the said manor, to be and appear at the said next court-leet or view of frankpledge to be held, and afterwards held on, &c. at the said Swan-

FOR NOT ATTENDING TO SERVE ON A JURY.

Swan-tavern, in the said High-street, in Southwark aforesaid, in and for the manor aforesaid, to be impannelled to enquire and present for one year then next ensuing, and until some other person should be chosen in his place and stead, together with other good and lawful men, resiants and inhabitants within the precinct of the view of frankpledge aforesaid, which in the same court-leet or view of frankpledge were presentable, that he together with other good and lawful men so to be impannelled might take his corporal oath before the steward of the said court to enquire and present, together with other jurors so as aforesaid to be impannelled, and afterwards impannelled, those things which in the same court-leet or view of frankpledge were presentable, to wit, at, &c. and within, &c. : And the said mayor, &c. say, that they the said mayor, &c. so being seised of and in the said manor, and so having such court-leet or view of frankpledge, and the said Joshua Catts so being an inhabitant and resiant of and in the said manor, and owing suit and service at the said court leet or view of frankpledge, and so being a fit and able person to serve as one of the jurors in form aforesaid, and so having been duly summoned in manner and form and for the purpose aforesaid, and he the said J. C. continuing and being an inhabitant and resiant within the said manor, and owing suit and service as aforesaid, and so being and continuing a fit and able person as aforesaid, for the purpose aforesaid, in manner and form aforesaid, a court-leet or view of frankpledge of the manor aforesaid was afterwards held in and for the said manor, to wit, at the Swan tavern, in, &c. and within, &c. within one month next after the feast of St. Michael the Archangel, in the year 1770, that is to say, on, &c. before Samuel Cox, esquire, deputy of B. G. esquire, the then steward of the said mayor, &c. of the said city of the said court, being the next court-leet or view of frankpledge of the manor aforesaid, held in and for the said manor, after the said J. C. was so summoned in manner and for the purpose aforesaid, of all which premises the said J. C. had due notice, to wit, at, &c. and within, &c. ; and the said mayor, &c. further say, that the said J. C. although he had due notice of all and singular the premises aforesaid, did not appear at the said court-leet or view of frankpledge of the manor aforesaid, so held at the Swan-tavern, in, &c. and within, &c. according to the custom of the same manor within one month next after the feast of St. Michael the archangel, on, &c. before Samuel Cox, esquire, deputy of B. G. esquire, then steward of the said mayor, &c. upon the oath of T. S. J. H. &c. &c. &c. honest and lawful men, then residing and inhabiting within the said manor, and charged at the said court leet or view of frankpledge of the said manor, so held at the Swan-tavern, in, &c. and within, &c. according to the custom of the said manor, within one month next after the feast of St. Michael the Archangel, that is to say, on, &c. before the said S. C. esquire, deputy to the said B. G. esquire, then steward of the said mayor, &c. of their court aforesaid, to enquire of and present all such things as were presentable

presentable and belonging to the said court to present, it was by them the said jurors at the said court-leet or view of frank-pledge, held within and for the said manor as aforesaid, on, &c. presented that the said J. C. being a resiant and inhabitant in the manor aforesaid, and a fit and able person to serve as one of the jurors for our sovereign lord the now king in and for the said manor, and having been duly summoned to appear at a court held in and for the said manor, on, &c. then and there to serve as one of the jurors aforesaid, and to take his oath for the due execution of the same office for the year ensuing, had not appeared, but made default, in contempt of the said court, to the evil example of others in the like case offending, for which offence the said J. C. was then and there, in and by the same court amerced, which said amerciamment by J. W. J. W. &c. &c. inhabitants and resiants within the said manor, then and there sworn and charged justly and duly to affere such amerciament as should be presented at that court, was in the same court affered to the sum of five pounds, to wit, at, &c. and within, &c. whereby an action hath accrued to the said mayor, &c. to wit, at, &c. and within, &c. to demand and have of and from the said J. C. the said sum of five pounds above demanded; yet the said J. C. though often required, hath not as yet paid the said five pounds or any part thereof, unto the said mayor, &c. or any or either of them, but hath hitherto wholly refused, and still doth refuse to pay the same, or any part thereof, to the said mayor, &c. or any or either of them to the said mayor, &c. their damage of ten pounds.

J. MORGAN.

Declaration in debt in B. R. for an amerciamment at a court baron, against the owner of an estate within the manor enfranchised by one of plaintiff's ancestor's, reserving only suit at court, &c.

1st Count states plaintiff to be tenant for life of the manor, and defendant owner of an estate within it, held by service of doing suit of court, which he neglecting to do after notice, the jury presented him, and amerced him 2s. 6d.

LANCASHIRE, to wit. William Bradshaw, esquire, complains of John Lawson, esquire, being in the custody of the marshal of the Marshalsea of our lord the now king before the king himself, in a plea that he render to him the said W. Bradshaw ten pounds which he owes to and unjustly detains from him; for that whereas the said W. Bradshaw, on the first day of January, in the year of Our Lord 1788, and long before was, and from thence hitherto hath been, and still is seised of the manor of Halton, in the county of Lancaster, in his demesne as of freehold, for and during the term of his natural life; and whereas the said John Lawson, during all the time aforesaid, was owner of fourteen acres of land in Nether Highfield, within the manor aforesaid, by the service of doing suit and service at the court baron of the manor aforesaid, when the said court baron should be holden and kept within and for the said manor: And the said W. B. further says, that whilst the said W. B. was so seised of the said manor as aforesaid, and whilst the said John Lawson was owner of the tenements aforesaid, with the appurtenances, and held the same as aforesaid, that is to say, on the fifteenth and twenty-second days of June, in the year aforesaid, to wit, at Halton aforesaid, notice was in due manner given by the said W. B. to the said J. L. that the court baron would

would be holden in and for the said manor, on Monday the thirtieth day of June, in the year aforesaid; and that the said W. B. further says, that on Monday the thirtieth day of June, in the said year of Our Lord 1788, the court baron of the said W. B. for the said manor was duly holden at the house of Edward Baynes, within the said manor, before the said W. B. and James Barrow, his steward there; yet the said J. L. although called, did not appear at the said court, nor do his suit and service there; whereupon at the said court it was presented by the oath of Robert Fletcher, James Stainbank, Christopher Walling, John Charnley, Robert Leaper, William Coston, John Hinde, James Hoggart, Matthew Chippendale, Robert Fisher, Leonard Martin, and Thomas Simpson, suitors of the same court then and there duly sworn and charged to enquire and present for the lord of the said manor all such things as were enquirable into and presentable at the said court, that the said John Lawson did not appear to perform his suit and service there, not being in any wise essoined; and the said jurors did the same there in the said court, upon their said oath, amerce the said John Lawson afterwards, to wit, on the twenty-ninth day of December, in the year aforesaid, at Halton aforesaid, had notice, and was then and there required to pay the said sum of two shillings and sixpence to the said W. B.; whereby an action hath accrued to the said W. B. to demand and have of the said John Lawson the said sum of two shillings and sixpence, parcel of the said sum of ten pounds above demanded: And whereas the said W. B. on the said first day of January, in the said year of Our Lord 1788, was, and from thence hitherto hath been, and still is seised of the manor of Halton, in the county of Lancaster, in his demesnes as of freehold, for and during the term of his natural life; and whereas also, within the manor aforesaid there now is, and from time whereof the memory of man is not to the contrary there hath been a certain ancient and laudable custom there used and approved, that is to say, that if any person owing suit and service to the court baron of the lord of the said manor for the time being, to be holden in and for the said manor, hath neglected to appear and perform suit and service at the said court, having had notice of the holding thereof, the suitors of the same court, in the same court sworn and charged to enquire and present for the lord of the manor those things which in the same court were enquirable and presentable, have, during all the time whereof the memory of man is not to the contrary, been used and accustomed to present and amerce, and of right ought to present and amerce on their oath such person so making default in such certain sum of money, as to such jurors should seem meet for such neglect or default, without any further or other afferment thereof: And whereas the said John Lawson, on the said first day of January, in the said year of Our Lord 1788, and long before was, and from thenceforth hitherto hath been, and still is the owner of divers, to wit, fourteen other acres of land, with the appurtenances, in Nether Highfield, within the manor aforesaid, and in respect thereof, during all

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2d Count states
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jury to present
and amerce.

Custom within
the manor

Jurors of the
court to present
and amerce the
suitors for the
neglect of suit
and service.

3d Count states
plaintiff has
seised in fee

that time did owe, and was liable to perform suit and service at the court baron of the manor aforesaid, whenever the said court should be holden and kept within and for the said manor: And the said W. B. further says, that whilst the said W. B. was so seised of the said manor as aforesaid, and whilst the said J. L. was owner of the tenements aforesaid, with the appurtenances as aforesaid, that is to say, on the fifteenth and twenty-second days of June, in the year aforesaid, to wit, at H. aforesaid, notice was in due manner given by the said W. B. to the said J. L. that the court baron of the said W. B. of his said manor would be holden in and for the said manor, on Monday the thirtieth day of June, in the year aforesaid; and the said W. B. further says, that on Monday the thirtieth day of June, in the said year of Our Lord 1788, the court baron of the said W. B. of his said manor was duly holden at the house of Edward Baynes, within the said manor, before the said W. B. and James Barrow his steward yet the said John Lawson, although called, did not appear at the said court, nor did perform his suit and service there; whereupon at that same court it was presented by the oath of Robert Fletcher, James Stainbank, Christopher Walling, John Charuky, Robert Lesper, William Calton, John Hinde, James Hoggart, Matthew Chipindale, Robert Fisher, Leonard Martin, and Thomas Simpson, jurors of the same court then and there duly sworn and charged to enquire and present for the lord of the said manor those things which in the same court were enquirable and presentable, that the said John Lawson did not appear at that court to perform his suit and service there, not being in any wise essoined; and the said jurors did then and there in the same court present and amerce the said John Lawson in the sum of two shillings and sixpence for such neglect and default aforesaid, wherof the said John Lawson afterwards, to wit, on the twenty-ninth day of December, in the year last aforesaid, at H. aforesaid, had notice, and was then and there required to pay the said last-mentioned sum of two shillings and sixpence to the said W. B.; whereby an action hath accrued to the said W. B. to demand and have of the said J. L. the said last-mentioned sum of two shillings and sixpence, parcel of the said sum of ten pounds above demanded: And whereas the said W. B. on the said first day of January, in the year of Our Lord 1788, and long before was, and from thence hitherto hath been, and still is seised of the manor of H. in the said county of Lancaster, in his demesne as of fee; and whereas the said J. L. during all the time last aforesaid, was owner of divers, to wit, fourteen other acres of land in Nether Highfield, with the appurtenances, within the manor aforesaid, and held the same of the aforesaid W. B. as of his manor aforesaid, by the service of doing suit and service at the court baron of the manor, whenever the said court should be holden and kept within and for the said manor, or in default thereof, paying to the lord of the said manor for the time being for every such default two shillings and sixpence of lawful money of England: And the said W. B. further says,

DEBT.—FOR FINE ON ADMISSION TO COPYHOLD.

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says, that whilst the said W. B. was so seised of the said manor as aforesaid, and whilst the said J. L. was owner of the tenements aforesaid, with the appurtenances as aforesaid, and held the same as aforesaid, that is to say, on the fifteenth and twenty-second days of June, in the year aforesaid, at Halton aforesaid, notice was in due manner given by the said W. B. to the said J. L. that the court baron of the said W. B. of his said manor would be holden in and for the said manor, on Monday the thirtieth day of June, in the year aforesaid; and the said W. B. further says, that on Monday the thirtieth day of June, in the year of Our Lord 1788, the court baron of the said W. B. of his said manor was duly holden at the house of E. B. within the said manor, before the said W. B. and James Barrow, his steward there; yet the said J. L. although called, did not appear at the said court, nor do his suit and service there, but therein made default, and such default at the same court was duly presented by the oath of R. F. J. S. C. W. J. C. R. L. W. C. J. H. J. H. M. C. R. F. L. M. and T. S. suitors of the same court, in the same court then and there duly sworn and charged to enquire and present for the lord of the said manor all such things as were enquirable and presentable at the said court; whereby an action hath accrued to the said W. B. to demand and have of the said J. L. the said last-mentioned sum of two shillings and sixpence, other parcel of the said ten pounds above demanded: And whereas the said J. L. afterwards, to wit, on the first day of January, in the year of Our Lord 1788, at Halton aforesaid, in the county aforesaid, borrowed of the said W. B. nine pounds twelve shillings and sixpence of like lawful money, to be paid to the said W. B. whenever afterwards the said J. L. should be thereto requested; whereby an action hath accrued to the said W. B. to demand and have of and from the said J. L. the sum of nine pounds twelve shillings and sixpence, residue of the said sum of ten pounds above demanded; yet the said J. L. although often requested, hath not yet paid the said sum of ten pounds above demanded, or any part thereof, to the said W. B.; but to do this hath hitherto wholly refused, and still doth refuse, to the damage of the said W. B. of ten pounds; and therefore he brings his suit, &c. Pledges, &c.

4th Count, for
pl. 12s 6d. re
fidue, &c. on
mutualis.

GEORGE WOOD.

CAMBRIDGE, to wit. John Hitch complains of Richard Wallis, being, &c. of a plea that he render to him the said John fifty-one pounds eight shillings of lawful, &c. which he owes to and unjustly detains from him; for that whereas he the said John, long before and on the tenth day of, &c. to wit, at, &c. in the said county of C. was, and from thence hitherto hath been, and still is lord of the manor of M. in the said county of C.; and whereas within the said manor there now is, and from time whereof the memory of man is not to the contrary, there have been certain copyhold premises, to wit, a certain close of pasture containing

Declaration for a
customary fine
payable on the
defendant's ad-
mission to copy-
hold premises
upon a certain
der.

taining by estimation two acres, and also a certain messuage or tenement, with a croft thereto adjoining, and also a certain other close, containing, &c. with the appurtenances, and which said lands, messuages, and premises, for and during all the time last aforesaid, have been parcel of the customary tenements of the same manor, held of the lord of the said manor by copy of the court roll of the said manor, at the will of the lord, according to the custom of the said manor, to wit, at, &c.: And whereas one E. M. before and on the said tenth day of, &c. to wit, at, &c. was seised in her demesne as of fee at the will of the lord, according to the custom of the said manor, of the said copyhold lands, messuage, and premises before particularly mentioned and described, with the appurtenances, and being so seised thereof she the said E. M. afterwards, to wit, on, &c. at, &c. according to the custom of the said manor, for and during all the time last aforesaid there used and approved of, surrendered and gave up the said lands and premises, with the appurtenances, to the said John, so being lord of the said manor, by the hands of A. B. then being steward of the court of the said manor, to the use of the said Richard, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor; and thereupon afterwards, to wit, at the court of him the said John of his manor aforesaid, held within the said manor, on the same day and year, to wit, at, &c. before the said A. B. so being steward of the court of the said manor as aforesaid, came the said Richard, in his own proper person, and then and there earnestly desired that he the said Richard might be admitted into the said copyhold lands, messuage, and premises, with the appurtenances, according to the surrender of the said E. M. as aforesaid; and thereupon the said John, so being lord of the said manor as aforesaid, did then and there, by the said A. B. his said steward, admit the said Richard to the said copyhold lands, &c. with appurtenances, to hold the same by copy of the court roll of the said manor, to the use of him the said Richard, his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor; and the said A. B. so being steward as aforesaid, did then and there in open court assess the sum of fifty-one pounds eight shillings to be paid by the said Richard to the said John, as being lord of the manor aforesaid, as and for a reasonable fine for his the said Richard's admission into the said copyhold lands, &c. with the appurtenances as aforesaid, and then and there in open court appointed the tenth day of, &c. then next following, at, &c. within the said manor, for him the said Richard to pay to the said John the said sum of fifty-one pounds eight shillings, to wit, at, &c. whereof the said Richard afterwards, to wit, on, &c. at, &c. had notice: Yet the said John in fact saith, that the said Richard did not, on the said tenth day of, &c. pay, nor hath he at any other time whatever since hitherto paid, or cause to be paid to the said John the said sum of fifty-one pounds eight shillings or any part thereof, but hath wholly refused and neglected so to do; by means whereof an action hath accrued to the said John to demand

DEBT.—FOR AN AMERCIAMENT FOR A NUISANCE.

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demand and have of the said Richard the said fifty-one pounds eight shillings above demanded; yet the said Richard, although often requested, hath not yet paid the said fifty-one pounds eight shillings above demanded, or any part thereof, to the said John, but to pay the same, or any part thereof, to the said John he the said Richard hath hitherto wholly refused, and still refuses so to do, to, &c. Damage twenty pounds.

C. RUNNINGTON.

TOWN AND BOROUGH OF SOUTHWARK, to wit. The mayor, commonalty, and citizens of the city of London, by S. H. their attorney, complain against H. W. in a plea that he render unto them five pounds, which he owes to and unjustly detains from them, &c.; for that whereas the mayor, commonalty, and citizens of the said city, on, &c. and long before, and from thence hitherto were and still are seised in their demesne as of fee of and in the manor called, &c. with the appurtenances, within the town and borough of Southwark, in the county of S. and within the jurisdiction of this court; and whereas the said mayor, commonalty, and citizens of the said city, and all those whose estates they then had and now have of and in the manor aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and have been accustomed to have and hold a court or view of frankpledge within the said manor of all the inhabitants once in every year, that is to say, within one month next after the feast of, &c. before their steward of the manor aforesaid, for the time being, or his deputy steward, as belonging and appertaining to the said manor; and whereas at a court of view of frank pledge of the manor held at, &c. within the said manor, and within the jurisdiction of this court, according to the custom of the said manor, and within one month next after the feast of, &c. that is to say, on, &c. before J. E. esquire, deputy to B. G. esquire, then steward of the said mayor, commonalty, and citizens of the said city of L. of their manor aforesaid, upon the oaths of T. D. esquire, &c. &c. [insert the names of the jury correctly, &c.] honest and lawful men, then residing and inhabiting within the said manor, sworn and charged at the court of view of frank pledge of the said manor, held at, &c. within the said manor, and within one month next after the feast of, &c. that is to say, on, &c. before the said J. E. deputy to the said B. G. esquire, then steward of the said mayor, &c. of the said city of L. of their manor aforesaid, to enquire and present all such things as were presentable and belonging to the said court to present, it was by them the said jurors, at the said court of view of frankpledge, held as aforesaid, on, &c. presented that the said H. W. then of the parish of, &c. gentleman, being a resistant and inhabitant within the said manor, and within the jurisdiction of this court of view of frankpledge, on, &c. and on divers other days and times before, did at his house in the parish of, &c. within the said manor, boil

Declaration of the Borough court, at the suit of the mayor, commonalty and citizens of London, for an amerciament a court-leet and a presentment for a nuisance.

DEBT.—FOR AMERCIAMENTS

boil the flesh and scrape the bones of several human bodies, and expose, lay out, and cast abroad the same in and about his house and yard adjoining to the king's highway, and thereby occasioned a noisome smell, to the great annoyance of the neighbourhood, and others his majesty's subjects passing by and repassing the said house and yard, and to the evil example of others in the like case offending; for which offence the said H. W. then and there in the same court was amerced, which said amercement by T. D. &c. inhabitants and residents within the said manor, then and there sworn and charged justly and duly to affere the said amercement, was in the same court affered to five pounds; whereby an action hath accrued, &c. to demand, &c.; yet the said H. W. although often requested, hath not as yet paid the said sum of five pounds, or any part thereof, to the said mayor, &c.; but to pay the same to them, or any of them, hath hitherto wholly refused and still refuses so to do; to, &c. Damage ten pounds.

N. B. This declaration ought to set forth that the defendant was an inhabitant, as well at the time of the amercement as of the offence. *Bull. Ni. Pl. 167.*

Declaration in the Borough court, at the suit of the mayor, &c. against defendant, for not attending to take upon him the office of constable, to which he had been presented.

TOWN AND BOROUGH OF SOUTHWARK, to wit. The mayor, commonalty, and citizens of the city of London, by S. H. their attorney, complain of T. M. of a plea that he render to them three pounds which he owes to and unjustly detains from them, &c.; for that whereas the said mayor, &c. on, &c. was, and long before, and from thence hitherto were, and still are seised in their demesne as of fee of and in the manor called, &c. with the appurtenances, within the town and borough of S. in the county of S. and within the jurisdiction of this court; and whereas the said mayor, &c. and all others whose estates they then had and now have of and in the manor aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and have been accustomed to have and hold a court of view of frankpledge within the said manor, of all the inhabitants and residents of the same manor, once in every year, that is to say, within one month next after the feast of, &c. before their steward of the manor aforesaid for the time being, as belonging and appertaining to the said manor; and whereas the said T. M. on, &c. and long before, and ever since hitherto hath been and still is a resident and inhabitant of and in the said manor, to wit, at, &c. within the said manor; and whereas at a court of view of frankpledge of the manor aforesaid, held by adjournment at the Three Tuns Tavern, on St. Margaret's Hill, within the said manor, and within the jurisdiction of this court, according to the custom of the same manor, within one month next after, &c. that is to say, on, &c. before J. E. esquire, deputy to B. G. esquire, then steward of the said mayor, &c. of the said city of London of their manor aforesaid, upon the oath of S. B. &c. &c. [the names of those who signed the presentment] honest and lawful men, then residing

residing and inhabiting within the said manor, sworn and charged at a court of view of frankpledge of the said manor, held at, &c. within the said manor, and within the jurisdiction of this court, according to the custom of the said court, within one month next after, &c. that is to say, on, &c. before the said B. G. esquire, then steward of the said mayor, &c. of their manor aforesaid, to present and enquire all such things as were presentable and belonging to the said court to present; it was by them the said jurors, at the said court of view of frank-pledge, held by adjournment as aforesaid, on, &c. presented that the said T. M. then of the parish of, &c. within the said manor, victualler, being a resiant and inhabitant within the said manor, and fit and able to execute the office of a constable within the said manor for the year next ensuing, and the said jury did elect him to be a constable accordingly; whereupon the said T. M. having been duly summoned, was solemnly called to come into the said court and take upon him the said office of constable, and take his oath for the due execution of the same office for the year ensuing; but the said T. M. did not appear in the said court, but made default in contempt of the said court, and to the evil example of others in the like case offending; for which offence the said T. M. then and there in the same court was amerced, which said amercement by T. D. &c. &c. inhabitants and resiants within the said manor, then and there sworn and charged justly and duly to affere the same amercement, was in the same court affered to three pounds, as by the records thereof now remaining in the same court may more fully appear; whereby an action, &c. to demand, &c.; yet, &c. [same conclusion as in last precedent.] Damage ten pounds.

Trinity Term, 23. Geo. III.

MIDDLESEX, to wit. The most noble Gertrude duchess dowager of Bedford, the most noble George duke of Marlborough, the most noble Caroline duchess of Marlborough, his wife, and Robert Palmer, esquire, complain of Morris Jones, being, &c. in a plea that he render to them six pounds of, &c. which he owes to and unjustly detains from them; for that whereas the said duchess dowager, the said duke and duchess, in right of the said duchess and the said Robert, on, &c. and long before, and from thence hitherto have been and still are ladies and lords of the manor of St. Giles in the Fields, with Bloomsbury, in the county of Middlesex, and that they and all those whose estate they have and had of and in the said manor, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and have used, and been accustomed to have, and still of right ought to have, a court-leet or view of frankpledge of all the inhabitants and resiants within the said manor, held before the steward of the said court for the time being, every year twice in the year, that is to say, within one month next after the feast of Easter, and again within one month next after the feast of St. Michael the Archangel,

Declaration in debt, against the defendant, for non-payment of an amercement affered at upon a presentment of the jury of the court at an adjourned court, according to the custom against defendant, who was a grocer, for having false weights in his possession.

Archangel, yearly, as belonging and appertaining to the said manor: And the said plaintiffs further say, that within the said manor there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain ancient and laudable custom there used and approved of, that is to say, that the said court leet, so held within one month next after the feast of Easter as aforesaid, during all the said time immemorial hath used and accustomed to be, and of right ought to be adjourned by the steward thereof for the time being, so holding the same from the first holding thereof, within one month from the feast of Easter in each year, to any further time or times, within a reasonable space of time then next ensuing, and before the feast of Saint Michael then next following, as occasion hath required; which said court so from time to time adjourned, during all the time aforesaid hath been, and hath used and been accustomed to be, and of right ought to be held before the steward thereof, at the respective times to which the same court hath been so adjourned in pursuance of such adjournment as aforesaid; and that the jurors sworn and charged at every such court-leet or view of frankpledge, so held within one month next after the feast of Easter, to enquire and present those things which to the view of frankpledge belonged to enquire and present during all the time aforesaid continued, and have been used and accustomed, and of right ought to be continued as a leet and jury of the said manor, for so long a time as the said court hath been so adjourned and held by adjournment as aforesaid; and that the jurors and such twelve or more of them as have attended the said court at the holding thereof by such adjournment or adjournments, during all the said time whereof the memory of man is not to the contrary, have presented, and have been used and accustomed to enquire and present at such court, so holden by adjournment, such things as have happened within the said manor, after their having been so sworn and charged as aforesaid, which belonged to the view of frankpledge to enquire and present, to wit, at, &c.: And the said plaintiffs further say, that at a court-leet or view of frankpledge of the inhabitants and residents within the said manor, was in due manner holden within one month next after the feast of Easter, A. D. 1782, to wit, on, &c. in the year aforesaid, before C. N. C. esquire, then and still steward of the said plaintiffs of the courts of the said manor, which court was then and there adjourned by the said C. N. C. who was then and there the steward thereof as aforesaid, unto the said third day of May then next ensuing, at twelve of the clock of the forenoon of that day, to be holden within the said manor before the steward of the said court according to the custom aforesaid: And the said plaintiffs further say, that the said court so adjourned as aforesaid was afterwards, in pursuance of the said adjournment in due manner holden within the said manor, on the day and year and at the time to which it was so adjourned as aforesaid: And the said plaintiffs further say, that the said court so holden by adjournment as aforesaid,

said, was then and there further adjourned by the said C. N. C. then steward of the said manor, to a further day, to wit, to Tuesday the fourth of May then next, at six o'clock in the evening of that day, to be holden within the said manor, before the steward of the said court, according to the custom aforesaid [there were two more adjournments to June the fourth and twenty-first]: And the said plaintiffs further say, that the said court so adjourned as last aforesaid was afterwards, in pursuance of the said last-mentioned adjournment, in due manner holden on the twenty-first of June, and at the time to which the same court was so adjourned before the said C. N. C. esquire, then steward of the said court, to wit, at, &c. in, &c.: And the said plaintiffs further say, that the said defendant, on, &c. and before was, and from thenceforth hitherto hath been, and still is an inhabitant and resident within the said manor and jurisdiction of the said court of view of frankpledge, and was a common grocer by selling divers goods, wares, and merchandizes to his majesty's subjects there: And the said plaintiffs further say, that the said defendant being an inhabitant and resident within the said manor and jurisdiction of the said court as aforesaid, and using, exercising, and carrying on his said trade and business of a common grocer there as aforesaid, to wit, on, &c. within the said manor, unlawfully and deceitfully had in his custody one half hundred weight, wanting one ounce and the half of an ounce of its just and true weight, one other half hundred weight, wanting one ounce and the half of an ounce of its just and true weight, and then and there used the same in his said trade, to the great deceit, oppression, and damage of his majesty's subjects buying goods and merchandizes by such weights, against the peace of our lord the king: And the said plaintiffs further say, that they being ladies and lords of the said manor, with the appurtenances as aforesaid, and the said Morris Jones residing and inhabiting within the said manor and jurisdiction of the said court as aforesaid, at a court-leet or view of frankpledge of the said plaintiffs of their manor aforesaid, held within the said said manor for the manor aforesaid, within one month after the feast of Easter, to wit, on, &c. in the year last aforesaid, before C. N. C. then steward of the said manor, A. B. &c. &c. good and lawful men, there being inhabitants and residents within the said manor, were then and there duly sworn and charged to enquire of, and present those things which belonged to the view of frankpledge of the said manor, to enquire and present according to the custom of the said manor, and were then and there adjourned and continued by the same court, as such leet and jurors as aforesaid to the respective courts of view of frankpledge to be holden, and accordingly holden as aforesaid in and for the said manor, according to the custom of the said manor, unto and upon the said twenty-first of June in the year aforesaid; and thereupon at the court-leet and view of frankpledge of the said manor held within the said manor for the manor aforesaid, on the twenty-first of June 1782, before C. N. C. esquire, then steward of the court of the said manor, the jurors aforesaid so sworn and charged as

aforesaid,

aforesaid, according to the custom of the said manor for the whole time aforesaid used and approved there, upon their oath presented the said M. J. so as aforesaid, having in his custody, on, &c. the said several weights, to wit, &c. &c. wanting respectively the quantities of their just and due weight, and using the same in his said trade, for which said offence the said M. J. was then and there by the same court so held by adjournment as aforesaid, amerced at the sum of ten pounds, which said amercement was then and there at the said last-mentioned court, by A. B. &c. &c. then and there being refiants and inhabitants within the said manor, and then and there assors then and there duly sworn for that purpose, at six pounds to be paid to the ladies and lords of the said manor; whereof the said M. J. afterwards, to wit, on, &c. at, &c. had notice; *per quod actio accrevit*: Yct, &c. (Common conclusion in debt.)

FOREIGN JUDGMENTS.

Michaelmas Term, 26. Geo. III.

Declaration in debt on a decree in the court of sessions of Scotland for recol. deducting therefrom certain sums which had been paid.

MIDDLESEX, to wit. Mungo Dobie complains of Robertson Lidderdale, being, &c. debt two thousand pounds; for that whereas the said Mungo, at a certain court of our said lord the king called the court of sessions held at Edinburgh, in that part of the kingdom of Great Britain called Scotland, on, &c. by a certain decree of the same court recovered against the said defendant the sum of one thousand pounds sterling, with annual rent thereof from and since the term of Candlemas 1778, deducting therefrom one hundred and fifty pounds paid in August 1784, two hundred pounds for which J. L. had a warrant of the lords of the said court of sessions, and also one hundred and eighty pounds which the said defendant was entitled to be heard upon before payment; and that the said plaintiff also, in and by the said decree, recovered against the said defendant the sum of one pound seventeen shillings and ninepence for certain expences therein mentioned, as in and by the said decree remaining in the said court of sessions in Edinburgh aforesaid more fully appears: And the said Mungo avers, that at the time of the exhibiting the bill of the said Mungo, there was, and now is due and owing from the said defendant to the said plaintiff, under and by virtue of the said decree, a large sum of money, to wit, the sum of eight hundred and thirty-four pounds of lawful money of Great Britain, to wit, at, &c.: And the said Mungo further says, that the said decree still remains in its full force, strength, and effect, not in the least reversed, suspended, vacated, annulled, paid off, discharged, or satisfied, nor hath the said Mungo sued out any execution upon the said decree, or obtained any satisfaction for the said monies thereby decreed; *per quod actio accrevit* to demand the sum of eight hundred and thirty-four pounds, parcel of the said sum of two thousand pounds above demanded. (Add another Count same as first, only stating

stating seven hundred and sixty-nine pounds to be due on the decree; 3d Count, *mutuatus* for the residue.)

Drawn by MR. CROMPTON.

MIDDLESEX, to wit. John Ewer complains of J. R. being, &c. of a plea that he render to the said plaintiff three thousand one hundred and twenty-nine pounds of lawful money of Great Britain, which he the said defendant owes, &c.; for that whereas he the said plaintiff heretofore, to wit, on, &c. which was in the ninth year of the reign of, &c. in a certain court (to wit, a court of record) of our lord the king, called the supreme court of judicature, held for our sovereign lord the king at the town of St. Jago, in the island of Jamaica, that is to say, for the said island, and within the jurisdiction of the said court, the said last Tuesday in November, in the said ninth year of, &c. before the honourable T. B. chief judge of the said court, and other his associates, then sitting judges of the same court, to wit, at Westminster, in the county of Middlesex, by the consideration and judgment of the said court recovered against the said defendant a certain debt of two thousand one hundred and eighty-nine pounds current money of Jamaica, and also two pounds for his costs and charges by him about his suit in that behalf expended (to wit, by the assent of the said plaintiff, he remaining against the said defendant without defence) whereof the said defendant was convicted, as by the records and proceedings thereof remaining in the said supreme court of judicature, at the town of St. Jago, in Jamaica aforesaid, to wit, at Westminster aforesaid, more fully appears; which said judgment still remains in that court, to wit, at Westminster aforesaid, unreversed, unpaid, and unsatisfied; and the said plaintiff hath not as yet obtained any execution of the aforesaid judgment, whereby an action hath, &c. to demand and have of and from the said defendant large sum of money, to wit, the sum of one thousand five hundred and sixty-five pounds of lawful money of Great Britain (the said sum of one thousand five hundred and sixty-five pounds being the value of lawful money of Great Britain of the amount of the said two several sums of two thousand one hundred and eighty-nine pounds, and two pounds so recovered by the said plaintiff against the said defendant as aforesaid, at the time of the recovery thereof) parcel of the said sum of three thousand one hundred and twenty-nine pounds above demanded: And whereas the said Thomas and one P. R. in his lifetime, now deceased, and whom the said Thomas hath survived heretofore, to wit, on, &c. that is to say, at Westminster aforesaid, in the said county of Middlesex, by his certain writing-obligatory, sealed with his seal, and to the court of, &c. now here shewn, the date whereof is the day and year last aforesaid, acknowledged himself to be held and firmly bound to the said plaintiff in the sum of two thousand one hundred and eighty nine pounds current money of Jamaica, to be paid to the said plaintiff when he the said defendant should be there-to afterwards requested; and the said John avers, that the said

Declaration on a judgment in debt in the supreme court of judicature in Jamaica, for current money.

2d Count, on bond for ditto defendant being a surviving obligor.

274 FOREIGN JUDGMENT.—SCOTLAND COURT OF SESSIONS.

of money mentioned in the said writing-obligatory at the time of the making thereof as aforesaid was of a large value, to wit, of the value of one thousand five hundred and sixty-five pounds of lawful, &c. to wit, at Westminster aforesaid, whereby (the same being still wholly unpaid) an action hath, &c. the said sum of one thousand five hundred and sixty-five pounds of lawful, &c. (the said sum of, &c. being the value in lawful money of, &c. of the said sum of money mentioned in the said writing-obligatory at the time of the making thereof) residue of the said sum of, &c. above demanded; yet, &c. (common conclusion in debt.) J. MORGAN.

By way of caution I have added a 2d Count on the bond, but if they demand eye, you must go on without having the benefit of that Count, or stay till you can procure the original.

Declaration in debt on a judgment of *rel. pros.* in B. R. for not entering the issue.

MIDDLESEX, to wit. John Crompton complains of Robert Kennet, being, &c. in a plea that he render to him the said John ten pounds of, &c. which he owes to and unjustly detains from him; for that whereas the said John lately, that is to say, in the term of St. Michael now last past, in the court of our lord the now king, before the king himself, the same court then and still being at Westminster, in the said county of Middlesex, by the consideration and judgment of the same court, did recover against the said Robert seventy-three shillings, parcel of the said sum of ten pounds above demanded, which were adjudged to the said John according to the form of the statute in such case made and provided in the same court here, for his costs and charges sustained by him about his defence in a certain action then lately brought in the same court by the said Robert against the said John, by bill, without our lord the king's writ, in a plea of trespass upon the case, wherein issue being joined between the said Robert and the said John in the plea aforesaid, the said Robert did not enter the said issue so joined in order to be tried, but therein made default, as by the record of the same judgment now remaining here in the same court more manifestly appears; which said judgment still remains in its full force and effect, in no wise reversed, vacated, paid off, or satisfied, and the said John hath not sued out his execution of the judgment in form aforesaid recovered, to wit, at, &c. whereby an action hath accrued, &c. (A 2d Count on a *mutatus* for six pounds seven shillings.)

Declaration on a judgment recovered in the court of sessions in Scotland.

MIDDLESEX, to wit. B. late of, &c. was attached to answer A. of a plea that he render to the said A. two thousand three hundred and seventy-six pounds of, &c. which he owes to and unjustly detains from him; for that whereas the said A. at a certain court of our lord the king called the court of sessions, held at E. in the kingdom of Scotland, on, &c. by a certain decree of the same court, recovered against the said B. the sum of one thousand one hundred and eighty-five pounds of, &c. by a certain action of *rantum* and sale brought by the said A. against the said B. in the said court,

DEBT.—ON SIMPLE CONTRACT.—(a) PORT DUES.

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court, as in and by the said decree remaining in the said court at E. aforesaid manifestly appears; which said decree is still remaining in the same court in its full force and effect, and not paid, satisfied, reversed, vacated, and discharged; *per quod actio accrevit*: And whereas also the said A. afterwards, &c. by a certain other decree of the court of sessions in Scotland, recovered against the said B. the further sum of one thousand one hundred and eighty-five pounds of, &c. as in and by the same decree remaining in the said court of E. aforesaid manifestly appears; which said last-mentioned judgment is still remaining in its full force and effect, and not paid, satisfied, reversed, vacated, or discharged; *per quod actio accrevit*.

F. BULLER.

PORT DUES.

CORNWALL, to wit. Edward Broad, late of, &c. was summoned to answer T. Dewar of a plea that he render to the said T. three pounds which he owes to and unjustly detains from him; and thereupon the said T. by A. B. his attorney, saith that the town and borough of Saltash, in the said county of Cornwall, situate upon or near unto the banks of the river Tamar, is, and from time whereof the memory of man is not to the contrary hath been a navigable river from the sea unto and above the town and borough of Saltash, and that so much of the course of the said river as runneth from a place called, &c. in the parish of, &c. to a certain other place called, &c. in the said county, and from thence to a certain other place called, &c. in the parish of, in the county of Devon, and from thence unto a certain other place called, is, and from time out of mind hath been parcel of and within the bounds, limits, and jurisdiction of the said town and borough of Saltash; and that the inhabitants and burgesses of the said town and borough for the time being, from time whereof the memory of man is not to the contrary have been and are one body corporate and politic in fact and name, and have had and enjoyed a guild merchant within themselves, and at divers and sundry times within the times aforesaid have lawfully had and used divers names of incorporation, to wit, of old time the name of burgesses of, and afterwards anciently the name of free burgesses of Saltash, until the nineteenth of June, in the twenty-seventh year of our late lady Elizabeth, queen of England, &c. which day our said late lady queen Elizabeth, by her letters patent bearing date at Westminster the same day and year last above-mentioned, incorporated them by the name of mayor and free burgesses of Saltash, in the county of Cornwall: And the said plaintiff further saith, that from time whereof the memory of man is not to the contrary, the said mayor and free burgesses, and their predecessors have from time to time at their proper costs and charges maintained and kept a buoy or buoys for the guidance of

Declaration
the lessee of the
corporation
Saltash, for port
dues.

(a) For the remainder of Debt on Simple Contracts and Articles of Agreement unsatisfied, see *Post* at the end of Declarations in Debt.

ships and vessels sailing and coming to, and sailing and going from the town and borough of S. within the above-mentioned course of the said river Tamar, within the limits and bounds of the said borough, and of right were bound to maintain and keep such buoy or buoys, and also during all the time aforesaid have been used and accustomed, and of right ought from time to time to maintain, repair, and keep one or more certain wharf or wharfs, key or keys, within the above-mentioned limits and bounds of the said river Tamar, at their like proper costs and charges, for the loading and unloading of goods, wares, and merchandizes, into, upon, from, and out of all ships and vessels from and upon such wharf or wharfs, key or keys, and at their like proper costs and charges for the time being from the time aforesaid, have found and provided, and have been accustomed to find and provide, and of right ought to find and provide lawful weights and measures for the weighing and measuring of goods, wares, and merchandizes so imported into or exported from and out of the said bounds and limits of the said town and borough, and for and in consideration of the premises, the said mayor and free burgesses, and their predecessors for the time being, from time whereof, &c. have had and received, and have been used and accustomed, and of right ought to have and receive of and from every master and conductor of every ship or vessel sailing and coming within the above-mentioned bounds and limits of the water of the said river Tamar, or sailing and going from and out of the same limits and bounds of the said water of the said river, the several reasonable tolls and duties hereinafter mentioned, to and for their own use, that is to say, for every quarter of flour of wheat containing eight bushels one penny, and for every ton of timber two-pence; for every quarter of oats containing eight bushels *per* quarter one penny; and for the anchorage of every ship or vessel one shilling; and for the measuring of every quarter of oats and barley containing eight bushels *per* quarter one penny: And the said plaintiff further saith, that by an indenture made at Saltash aforesaid, in the county aforesaid, on, &c. between the said mayor and free burgesses in their corporate and politic capacity, by their name of the mayor and free burgesses of the borough of Saltash, in the county of Cornwall, of the one part, and him the said plaintiff of the other part, one part of which said indenture, sealed with the common seal of the said mayor and free burgesses, he the said plaintiff brings here into court, the date whereof is the day and year last above-mentioned, they the said mayor and free burgesses did demise and grant unto him the said plaintiff all and singular the tolls and duties above-mentioned arising and accruing within the said liberty of the said water of the said river Tamar, as amply and in such manner as had usually been paid to the said mayor and free burgesses of Saltash aforesaid, to have and to hold the same unto him the said plaintiff, his executors, administrators, and assigns, from thenceforth, for, and during, and unto the full end and term of one year then next ensuing, and fully to be complete and ended, as by the said indenture may appear; by virtue of which said demise he the said plaintiff

DEBT.—ON SPECIALTIES, ARTICLES OF AGREEMENT.

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plaintiff became possessed of the tolls and duties aforesaid: And the said plaintiff further saith, that from and after the making of the said indenture, to wit, on, &c. and on divers other days and times between that day and the day of , the said Edward was the master and conductor of the ship or vessel called S. and as such master and conductor of the said ship or vessel, on, &c. in the said ship or vessel did import and unload within the limits and liberties aforesaid fifteen quarters of wheat flour, containing eight bushels *per* quarter, whereby there accrued and became due unto him the said plaintiff one shilling and threepence, at the rate of one penny *per* quarter, and anchored the said ship or vessel there, whereby there accrued and became due unto him the said plaintiff one shilling, and for the buoyage of the said ship or vessel there then accrued and became due unto him the said plaintiff one shilling; and afterwards, to wit, on, &c. the said Edward did import and unload within the liberties and limits aforesaid seventy tons of timber in and from the said ship or vessel, whereby there accrued and became due unto him the said plaintiff one pound eleven shillings and eightpence, at and after the rate of threepence *per* ton, and for anchorage there then accrued and became due one shilling, and for buoyage of the said ship or vessel there then accrued and became due unto the said plaintiff one shilling, and on, &c. the said Edward imported and unloaded within the limits and liberties aforesaid, one hundred and eight ton of timber, whereby there accrued and became due to him the said plaintiff one shilling and eightpence, at and after the rate of twopence *per* ton, and for anchorage then and there one shilling, and for the buoyage one shilling, and on, &c. the said Edward, within the limits and liberties aforesaid, loaded on board the said ship or vessel, and exported from thence four hundred and fifty quarters of wheat, containing eight bushels *per* quarter, whereby there accrued and became due to him the said plaintiff one pound eighteen shillings, at and after the rate of one penny *per* quarter, and for anchorage one shilling, and for buoyage one shilling; all which said sums accruing and becoming due to the said plaintiff from the said defendant, do amount to the sum of three pounds and sevenpence; and the said defendant being so indebted unto the said plaintiff, he the said plaintiff afterwards, to wit, on, &c. requested the said defendant to pay him the same; yet the said defendant hath not paid, &c.

E. BOOTLE.

For Debt on Simple Contracts, on Bye-Laws, for Fines and Amercements, escapes, and invalid Agreements, see *post* at the end of Declarations in debt; several

good precedents communicated too late for insertion here, see Index, Debt on Simple Contracts.

DEBT.—ON SPECIALTIES.

DORSETSHIRE, to wit. Edward Colcord v. Gilbert Homoy, in a plea that he render to him five hundred and ninety pounds of lawful money of Great Britain, which he owes to and

Declaration in debt for a penalty in a sealed agreement, and had, &c. &c.

the common Counts for work and labour, money

T 3

unjustly

unjustly detains from him; for that whereas by a certain agreement made the fourteenth day of, &c. at P. in North America, to wit, at, &c. in, &c. between the said plaintiff, by the name and description of, &c. carpenter, on the one part, and the defendant, by the name of, &c. mariner, of the other part (which said agreement, sealed with the seal of the said defendant, the said plaintiff now brings into court here, the date whereof is the day and year aforesaid): It is witnessed that the said plaintiff did contract and agree with the said defendant to go to England in the brig Dominica, which the said defendant had laying to the wharf, and on his arrival in England did further agree to erect and build a certain building which he said defendant had on board the said brig, in a complete and workmanlike manner; for the true and faithful performance of the said building he the said Edward agreed to have for wages three pounds sterling *per* month, from the day of sailing from the aforesaid port of P. till discharged by the said defendant, after completing the aforesaid building; and the said defendant agreed to find the said plaintiff his board while he might be employed upon the said building; for the true and faithful performance of the above, they the said plaintiff and defendant did severally bind themselves in the true and penal sum of five hundred pounds of lawful money of Great Britain, as by the said agreement (reference being thereto had) will more fully appear: And the said plaintiff in fact says, that although he the said Edward, in pursuance of the said agreement after the making and entering into the same as aforesaid, to wit, on, &c. embarked at P. aforesaid, and set sail from thence on board the said ship Dominica for England, and did afterwards arrive there for the purpose of erecting and building the said building in the said agreement mentioned, and did accordingly proceed to and erect and build the same in England; and afterwards, to wit, on, &c. duly completed the same in a workmanlike manner according to the tenor and effect of the said agreement, to wit, at, &c. when he the said plaintiff was there discharged by the said defendant; and although month, elapsed from the day of the said plaintiff's sailing from the said port of P. till the said completing the said building, and the discharge of the said plaintiff by the said defendant; and the wages of the said plaintiff for the making the said erection and building, amounting (at the said rate of three pounds sterling *per* month according to the terms of the said agreement) to a large sum of money, to wit, the sum of pounds of lawful money of Great Britain, on the expiration of the said time, to wit, on, &c. at, &c. became and were then and there due and payable to the said plaintiff, and ought then and there to have been fully paid to him by the said defendant according to the tenor and effect of the said agreement; and although the said defendant hath paid to the said plaintiff a part of the said sum of money, and afterwards, to wit, on, &c. was requested by the said plaintiff to pay, and then and there ought to have paid the residue thereof amounting in the whole to a large sum of money, to wit, the sum of pounds

ARTICLES OF AGREEMENT—COMMON COUNTS.

pounds of lawful, &c. according to the tenor and effect of the said agreement; yet the said plaintiff avers, that the said defendant did not, when he was so requested as aforesaid, pay such residue, nor hath he as yet paid the same or any part thereof to the said plaintiff, but hath hitherto wholly neglected and refused so to do, contrary to the tenor and effect of the said agreement on the part of the said defendant to be performed, to wit, at, &c. whereby and according to the tenor and effect of the said agreement, the said defendant then and there forfeited and became liable to pay to the said plaintiff on request the said five hundred pounds in the said agreement mentioned, as the penalty to bind the performance thereof, whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said five hundred pounds so forfeited as aforesaid, parcel of the said five hundred and ninety pounds above demanded. *And whereas* the said plaintiff afterwards, to wit, on, &c. at, &c. at the special instance and request of the said defendant, did perform and bestow certain work and labour, care, diligence, and attendance as a house carpenter in and about the business of the said defendant, and for the said defendant, and used and exercised his skill as such house carpenter in and about such business, at the like special instance and request of the said defendant, for and in consideration of a certain other sum of money, to wit, the sum of pounds of like lawful money of Great Britain, to be paid by the said defendant to the said plaintiff for the same, whereby the said defendant became then and there indebted to the said plaintiff in the said last-mentioned sum of pounds to be paid by the said defendant to the said plaintiff upon request, whereby an action hath, &c. &c. *And whereas* the said plaintiff afterwards, to wit, on, &c. at, &c. at the like special instance and request of the said defendant, did perform and bestow certain other his work and labour, care, diligence, skill, and attendance as a house carpenter in and about the business of the said defendant, and for the said defendant, and also used and applied his skill as such carpenter in and about the said last-mentioned business, at the like special instance and request of the said defendant, for and in consideration of so much money as he the said plaintiff reasonably deserved to have for the same, to be paid by the said defendant to the said plaintiff on request; and the said plaintiff avers, that he reasonably deserved to have and receive from the said defendant the sum of pounds of like lawful money, to wit, at, &c. whereby of the said defendant afterwards, to wit, on, &c. at, &c. in, &c. had notice, and thereby then and there became indebted to the said plaintiff in the said last-mentioned sum of money to be paid by the said defendant to the said plaintiff upon request, whereby an action hath accrued, &c. &c. *And whereas, &c.* (Money had and received in debt, an account stated in debt, and common conclusion in debt.)

1st Count, for debt, for work and labour.

3d Count, for sum money in debt.

T. BARROW.

T.

LANCA.

(a) Declaration
in covenant for
peaceable enjoy-
ment; breach
that the defend-
ant himself in-
terrupted him.

LANCASHIRE, to wit. James Rothwell v. John Hornby, in a plea of breach of covenant; for that whereas by a certain indenture made the sixteenth day of, &c. A. D. 1787, to wit, at &c. in, &c. between the said John of the one part, and the said James of the other part (one part of which said indenture, sealed with the seal of the said John, the said James now brings into court here, the date whereof is the day and year aforesaid): It is witnessed, that for and in consideration of the sum of twenty-four pounds of lawful money of Great Britain to him the said John in hand well and truly paid by the said James at or before the sealing or delivering the said indenture, the receipt whereof he the said James did thereby acknowledge and confess, and thereof and of and from every part thereof did thereby release and for ever discharge him the said James, his executors, administrators, and assigns, and also for and in consideration of the rents and covenants thereafter reserved and contained on the part and behalf of the said James, his executors, administrators, and assigns, to be paid, done, and performed, and for divers other good causes and considerations him thereunto moving, he the said John had demised, granted, and let to farm to the said James, his executors, administrators, and assigns, all that messuage or cottage house, with a garden thereunto belonging, containing five perches of ground, together with the Turf Stack Hill, as the same were in the possession of one T. B. and which said premises were situate in, &c. and all and singular houses, outhouses, edifices, buildings, yards, walls, wastes, waters, watercourses, privileges, and appurtenances whatsoever to the said messuage or cottage-house belonging, or therewith usually occupied or enjoyed, to have and to hold the said thereby demised messuage, cottage house, garden, and Turf Stack Hill and every part thereof, with their and every of their appurtenances unto him the said John, his executors, administrators, and assigns, from the thirteenth day of February then instant, as to the garden with the appurtenances, and the twelfth day of May then next ensuing as to the housing and Turf Stack Hill, with the appurtenances, for and during, and unto the full end and term of eleven years from thence next ensuing. and fully to be complete and ended, at and under the payment of the yearly rent, and the performance of the covenants in the said indenture expressed on the part and behalf of the said John to be paid, done, and performed; and the said John, for himself, his heirs, and assigns, did by the said indenture (among other things) covenant, promise, and agree to and with the said James, his executors, administrators, and assigns, in manner following, that is to say, that it should and might be lawful to and for the said James, his executors, administrators, and tenants, or undertenants and assigns, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said thereby demised messuage, cottage, garden, Turf Stack Hill, and premises, with the appurtenances, without any let, loss, hindrance, molestation, or disturbance of

(a) This is a declaration in covenant, not in debt.

him

ARTICLES OF AGREEMENT.

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him the said John, his heirs, and assigns, or of any other person or persons whatsoever, as by the said indenture (relation being thereto had) may and will more fully and at large appear; by virtue of which said demise he the said James afterwards, to wit, at the respective times in the said indenture for that purpose mentioned, to wit, at, &c. entered into the said demised premises with the appurtenances, and became and was, and still is thereof possessed; and although the said James always, from the time of the making of the said indenture, hitherto hath well and truly performed all things in the said indenture contained on his part and behalf to be performed and fulfilled, according to the true intent and meaning of the said indenture, to wit, at, &c.; yet protesting that the said John hath not done or performed any thing in the said indenture contained on his part and behalf to be performed and fulfilled, he the said James in fact says, that after the said demise and entry of the said James into and upon the said demised premises as aforesaid, and before the exhibiting the bill of the said James, to wit, on, &c. and on divers other days and times between that day and the exhibiting the bill of the said James, he the said John wilfully, without the leave or licence, and against the will of the said James, entered into and upon the said demised premises with the appurtenances, and particularly into and upon the said part thereof called the Turf Stack Hill, and then and at those several times disquieted, disturbed, molested, and interrupted the said James in the peaceable and quiet use, occupation, possession, and enjoyment as well of the said part of the said demised premises called the Turf Stack Hill, as of all the said other demised premises, contrary to the form and effect of the said indenture, and the said covenant of the said James in that behalf made as aforesaid, to wit, at, &c.; and so the said James saith, that the said John, although often requested, hath not kept the covenant so made between the said John and the said James, but hath broken the same, and to keep the same with him the said James hath hitherto wholly refused and still doth refuse, to wit, at, &c. to the damage of the said James of fifty pounds; and therefore he brings his suit, &c.

T. BARROW.

DURHAM, to wit. Matthew Cully complains of Michael Turner being, &c. of a plea that he render to him five hundred pounds of lawful money of Great Britain, which he owes to and unjustly detains from him, &c.; for that whereas by a certain agreement indented, made, concluded, and agreed upon the thirteenth day of July 1784, at, &c. in, &c. between the said plaintiff of the one part, and the said defendant of the other part, which said agreement, sealed with the seal of the said defendant, he the said plaintiff brings here into court, the date whereof is the same day and year aforesaid, reciting as therein is recited, and among other

Declaration in debt for the penalty on non-performance of articles of agreement.

other things that a suit at law was then commenced and proceeding against the said defendant, at the instance of the said plaintiff to recover the possession of a farm, situate at, &c. which the said defendant then did endeavour to hold over after the expiration of a term to him thereof demised and granted by one R. C. then deceased, and the elder brother of the said plaintiff; and the said defendant and plaintiff being willing and desirous that the proceeding at law and the suit commenced against the said defendant should not be further prosecuted, but the same should cease and be concluded, and all differences then subsisting between them should be amicably settled and adjusted, therefore they the said plaintiff and defendant for the purpose aforesaid did, and each of them did for themselves and their several and respective heirs, executors, and administrators, by the said agreement, covenant, promise, and agree in manner and form as in the said agreement is mentioned, and among other things the said defendant did by the said agreement covenant and agree for himself and his heirs, executors, and administrators, to and with the said plaintiff, his heirs and assigns, that he the said defendant would pay, bear, and discharge all costs and charges that should or might arise and had been expended in and about the proceedings at law commenced against him as aforesaid by the said plaintiff for the recovering the possession of the said farm and premises; and for the due performance of that agreement and of the several covenants and clauses therein specified and contained, the said plaintiff and defendant did by the said agreement mutually bind themselves, their executors, and administrators, to the other of them in the penal sum of five hundred pounds, as by the said agreement more fully appears; and the said plaintiff protesting that he always, from the time of the making the said agreement hitherto hath well and truly observed, performed, and fulfilled and kept every thing in the said agreement contained on his part and behalf to be observed, performed, fulfilled, and kept, according to the form and effect of the said agreement; protesting also that the said defendant since the making of the said agreement hath not observed, &c. any of the covenants, clauses, and agreements in the said agreement contained on his part and behalf to be observed, &c. according to the form and effect of the said agreement; in fact the said Michael says, that the costs and expences that did arise and had been expended in and about the proceedings in law in the said agreement mentioned, and therein covenanted by the said defendant to be paid, born, and discharged by him, amounted to a large sum of money, to wit, the sum of fourteen pounds, to wit, at, &c. in, &c. whereof the said Michael afterwards, and after the making of the said agreement, to wit, on, &c. there had notice; by reason whereof he the said defendant then and there ought to have paid, born, and discharged the same according to the tenor and effect of the said agreement, and of the covenant of the said Michael in that behalf made as aforesaid; but the said Michael did not then nor at any other time pay, bear, or discharge the same, although a reasonable time for that purpose

pose hath long since elapsed, but hath hitherto wholly refused and still doth refuse so to do, contrary to the form and effect of the said agreement and of the said covenant of the said Michael in that behalf made as aforesaid; by reason whereof and by force of the said agreement an action hath accrued to the said plaintiff, to demand and have of and from the said defendant the said sum of five hundred pounds above demanded: Yet the said defendant, although often requested, hath not yet paid, but hath hitherto wholly refused and still doth refuse to pay the same to him; whereupon the said plaintiff says he is injured and hath sustained damage to the value of five hundred pounds; and therefore, &c.

And the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that he ought not to be charged with the said debt by virtue of the said agreement in the said declaration above-mentioned, because he says, that the said agreement in the said declaration mentioned is not the deed of him the said defendant, and of this he puts himself upon the country; and the said plaintiff doth the like, &c.: And for further plea in this behalf, the said defendant, by leave of, &c. *avies non*; because protesting that the costs and charges that did arise and had been expended at, in, or about the proceedings at law in the said agreement mentioned, at the time of the making of the said agreement, and therein covenanted by the said defendant to be paid, born, and discharged by him, did not amount to the sum of fourteen pounds, in manner and form as the said Matthew hath above declared against him; for plea nevertheless in this behalf the said Michael says, that the costs and charges that did arise and had been expended in and about the proceedings at law commenced against the said Michael by the said Matthew in the said agreement mentioned as aforesaid, at the time of the making of the said agreement, and therein covenanted to be paid, born, and discharged by him the said Michael, amounted to a much less sum of money than the sum of fourteen pounds, to wit, the sum of three pounds, and no more, to wit, at, &c.: And the said Michael further says, that after the making of the said agreement in the said declaration mentioned, and within a reasonable time after, the said Michael had notice of the amount of the costs and charges, and before the time of exhibiting the bill of the said plaintiff, to wit, on, &c. he the said Michael tendered and offered to pay to the said Matthew the said sum of three pounds for the said costs and charges in the said agreement mentioned, and that the said Matthew then and there wholly refused to receive the same from the said defendant: And the said defendant further says, that always from the time of the making of the said agreement in the said declaration mentioned hitherto he the said Michael hath been and still is ready and willing to pay to the said plaintiff as aforesaid, for the said costs and charges in the said agreement mentioned; and the said defendant now brings the same here into court ready to be paid to the said plain-

Plea, tendered, the expenses and proceedings did not amount to 14l. but only 3l. which defendant offered to plaintiff.

tiff if he will accept the same; and this, &c. ; wherefore, &c., if, &c.

Replication that
the expences
amounted to
more, to wit,
74*l*.

And the said Matthew, as to the said plea of the said Michael by him lastly above pleaded in bar says, that he, by reason, &c. *precludi non*; because protesting that the said Michael did not tender or offer to pay to the said plaintiff the said sum of three pounds in that plea mentioned, in manner and form as the said Michael hath therein alledged; protesting also that the said Michael was not nor is willing to pay the same as therein alledged; for replication nevertheless the said plaintiff says, that the costs and expences that did arise and had been expended in and about the proceedings at law in the said agreement mentioned, and therein covenanted by the said Michael to be paid, born, and discharged by him, did and do amount to more than the sum of three pounds, to wit, to the sum of fourteen pounds, in manner and form as the said Matthew hath in his said declaration above complained against him, and this he the said plaintiff prays may be enquired of by the county

venue, county
palatine.

try; and the said Michael doth so likewise; therefore let a jury come thereon, and because the issue aforesaid, between the parties aforesaid above joined, ought to be tried by the men of the county palatine of Durham, to wit, of the body of the said county palatine of Durham, where his majesty's writ doth not run and not elsewhere; therefore for trying the issue aforesaid, between the parties aforesaid above joined, let the record of the plaint aforesaid be sent in charge to the bishop of Durham, that he may further give in charge the said record unto his majesty's justices within that liberty, so that they may have it at his majesty's next court to be held at Durham after the said record shall be delivered to them, there to cause the verification of the issues aforesaid to be made as the law shall direct in this behalf; and a day is given then and there to the said parties, and when that verification and the issues shall be there made and tried, that then the said bishop shall send the record of the said plaint, together with every thing that shall be done thereon in his majesty's court there to our said lord the king at Westminster, at a certain day which the said justices shall appoint to the said parties to be in the same court, then to hear judgment thereon, &c.

Mittimus to the
bishop of Dur-
ham.

Easter Term, 20. Geo. III.

Declaration in
debt, for a pen-
alty for the
non-perform-
ance of articles
of agreement in
not paying the
purchase money
for an allotment
of land appertaining to three messuages of plaintiff's, which plaintiff by the articles sold to de-
fendant.

MIDDLESEX, to wit. Henry Falsner complains of Hinman Allenby, being, &c. of a plea that he tender to the said Henry five hundred pounds of lawful, &c. which he owes to and unjustly detains from him, &c.; for that whereas by certain articles of agreement made and agreed on the second of October 1779, at, &c. in, &c. between the said Henry (by the name and description of, &c.) of the one part, and Hinman (by the name, &c.) of the other

part,

part, which said articles of agreement, sealed with the seal of the said Hanman, the said Henry brings here into court, the date whereof is the date by and year aforesaid, reciting that the said Henry was then entitled in fee simple to three messuages, in, &c. in the township of Ham the said Henry, J. W. and J. C. to each of which messuages, two thereof being freehold and one copyhold, belonged a right of common on the common salt marsh, lying in, &c.; and that the proprietors of the said messuages, in case the common salt marsh should be embanked from the sea, and allotted to the owners of commenable messuages in the said parishes, in lieu of their right of common therein, would be entitled to three several allotments of the said common salt marsh, in like manner as the other commenable messuages in the said parishes; and reciting also that the said defendant had contracted and agreed with the said plaintiff for the absolute purchase of all his the said Henry's right and interest of, in, and to all such allotment or allotments as should or might thereafter be made of the said common salt marsh of &c. to the said three messuages, or to the said Henry as the legal owner thereof, by virtue of any act of parliament or otherwise howsoever, at or for the price or sum of three hundred and fifteen pounds of lawful money of Great Britain, he the said Henry in consideration of the said sum of three hundred and fifteen pounds to be paid unto him as thereafter mentioned, did thereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said defendant, his heirs and assigns, that he the said Henry, his heirs and assigns, should and would, at the costs and charges of the said defendant (the expences of the time only excepted, which the said Henry was to pay within one month next after any act of parliament should pass for enclosing the said salt marsh), well and sufficiently convey, surrender, and assign unto the said defendant, his heirs and assigns, all such allotment or allotments of the said common salt marsh which should at any time or times thereafter be allotted to the said three messuages respectively by virtue of any act of parliament or otherwise howsoever, free from all incumbrances whatsoever, the rents and services to become due and payable to the lord or lords of the fee of which the said messuages were respectively holden, and all costs, charges, and expences to be incurred by any application to parliament, the embankment and inclosure of the said common salt marsh only excepted, and in consideration of the covenant thereinbefore contained on the part of the said Henry, and of the conveyance to be made by the said Henry, his heirs or assigns, pursuant thereto, the said Hanman did thereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said Henry, his executors and administrators, that he the said defendant, his executors or administrators should and would, on or before the fifth of April then next ensuing, well and truly pay or cause to be paid to the said Henry the said sum of three hundred and fifteen pounds of, &c. in full for the absolute purchase of the lands so allotted as aforesaid; and lastly for the true performance

of

of the covenants and agreements aforesaid, each of the said parties did bind himself, his heirs, executors, and administrators, in the sum of five hundred pounds, firmly by the said articles, as by the said articles, reference being thereto had, may more fully appear : And the said Henry in fact says, that the said defendant, did not on or before the said fifth of April next ensuing the making of the said articles of agreement pay, or cause to be paid, nor hath at any time since paid, or caused to be paid unto the said Henry the said sum of three hundred and fifteen pounds of, &c. or any part thereof, but hath wholly refused to pay the same, contrary to the said articles of agreement, and of the said covenant of the said defendant therein contained; whereby an action hath accrued to the said Henry to demand and have of and from the said defendant the said sum of five hundred pounds above demanded : Yet, &c. [Common conclusion in debt.]

S. LE BLANC.

Plea 1st, that he did pay, &c.; 2d, that plaintiff had nothing in the three messuages that could enable him to convey to defendant the allotments.

And the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says *alio non*; because he says that he did well and truly pay to the said Henry the said sum of three hundred and fifteen pounds of, &c. on the said fifth of April, in full, for the absolute purchase of the lands to be allotted, as in the said sealed articles in the said declaration mentioned; and of this he puts himself upon the country, &c.: And for a further plea in this behalf the said defendant, by leave, &c. *alio non*; because he says that the said Henry, at the time of the making of the said recited articles in the said declaration mentioned, had nothing in the said three several messuages in the said recited articles in the said declaration mentioned, whereby he could be enabled to convey, surrender, or assign unto the said defendant, his heirs and assigns, any allotment or allotments of the said common salt marsh which should at any time after the making of the said articles to be allotted to the said three messuages respectively, by virtue of any act of parliament or otherwise howsoever; and this, &c.; wherefore, &c.

G. WOOD.

Replication, setting forth the title to the two messuages that he is filed in fee, as to the other messuage that it is copyhold, and set forth a grant from the lord.

And the said Henry, as to the said plea of the said defendant by him secondly above pleaded in bar, says *precludi non*, because he says that before and at the time of the making of the said articles in the said declaration mentioned, he the said Henry was and from thenceforth continually hitherto hath been and still is filed in his demesne as of fee of and in two of the said messuages in the said articles in the said declaration mentioned, and therein stated to be freehold, and as to the said other messuage in the said declaration mentioned, and therein stated to be copyhold, he the said Henry says that the said last-mentioned messuage and two acres of land, at the time of the making of the said articles in the said declaration mentioned were, and from time to time whereof the memory of man is not to the contrary have been, and still are parcel of and within the

manor

manor of W. in the county of N. ; and that the said last-mentioned messuage and the said two acres of land, with the appurtenances, during all the time aforesaid have been, and still are a customary tenement of the said manor demised and demisable by copy of the rolls of the court of the said manor by the lord of the said manor, or by his steward of the court of the said manor for the time being to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord, according to the custom of the said manor : And the said Henry further says, that the lord George the Second, late king of England, long before the making the said articles in the said declaration mentioned, to wit, on, &c. and before and afterwards was lord of the said manor, whereof, &c. ; and the said lord George the Second being so lord of the said manor as aforesaid, long before the making the said articles in the said declaration mentioned, to wit, at the general court baron of our late sovereign lord king George the Second, holden in and for the said manor, on, &c. before T. F. gentleman, steward of the court of the said manor, by copy of the court rolls of the said manor granted the said customary tenement, with the appurtenances, parcel, &c. unto the said Henry, to hold to him the said Henry and his heirs of the lord, at the will of the lord, according to the custom of the said manor, by the several ancient yearly rents, fealty, suit of court, and all other services for the same, and of right accustomed ; by virtue of which said grant the said Henry afterwards, and before the making the said articles in the said declaration mentioned, to wit, on, &c. entered into the said customary tenement, with the appurtenances, parcel, &c. and was from thence until and at the time of the making of the said articles in the said declaration mentioned, and thence continually hath been hitherto and still is seised thereof in his demesne as of fee at the will of the lord, according to the custom of the said manor ; and so the said Henry says, that he, at the time of the making of the said articles in the said declaration mentioned, had a good and sufficient estate in the said three several messuages in the said articles in the said declaration mentioned, whereby he could be enabled to convey, surrender, and assign unto the said defendant, his heirs and assigns, all such allotment or allotments of the said common salt marsh which should at any time after the making the said articles in the said declaration mentioned be allotted to the said three messuages respectively, by virtue of any act of parliament or otherwise howsoever ; and this, &c. ; wherefore, &c. if, &c.

S. LE BLANC.

And the said defendant, is to the said replication of the said Henry by him made to the said plea of the said defendant by him secondly above pleaded in bar, says *actio non* ; because he says that the said Henry, by virtue of such his respective estates in the said three messuages in the said articles mentioned, as the said Henry hath in his said replication alledged, would not, in case the said common salt marsh should be embanked from the sea and allotted to the owners of commonable messuages in the said parishes, in

Rejoinder, that the messuages would not be entitled to the allotments.

lieu

288 REJOINDER—DEMURRER to REJOINDER—DEPARTURE.

lieu of their right of common thereon be entitled to three several allotments of the said common salt marsh, in like manner as the other messuages in the said parishes; and this, &c.; wherefore, &c. it, &c.

G. WOOD.

Demurrer to the
departure in
pleading rejoinder.

And for causes of demurrer in law in this behalf, according to the form of the statute in such case made and provided, the said Henry shews to the court here these causes following, to wit, for that the said plea of the said defendant by him in rejoinder pleaded, does not sustain, but is a departure from the said plea of the said defendant by him secondly above pleaded in bar, inasmuch as the said defendant by his said plea by him secondly above pleaded in bar, denies the title of the said Henry to the said three messuages in the said articles in the said declaration mentioned, and in the said plea of the said defendant by him above in rejoinder pleaded, he endeavours to put in issue the title of the said Henry to three several allotments of the said common salt marsh in respect of such his said three messuages, in case the said salt marsh should be embanked from the sea, and allotted to the owners of commonable messuages in the said parishes; and also for that the said defendant is by the said articles in the said declaration mentioned above escaped from questioning or denying the title of the said Henry in right of the said three messuages to three several allotments of the said common salt marsh, in like manner as the other commonable messuages in the said parishes, in case the said salt marsh should be embanked from the sea, and allotted to the owners of commonable messuages in the said parishes, in lieu of their right of common thereon; and also for that the said plea of the said defendant by him in rejoinder pleaded, is no answer to the said plea of the said Henry by him above pleaded in reply; and for that no issue can be taken on the said plea of the said defendant by him in rejoinder pleaded, and for that the same is argumentative, and in other respects uncertain, insufficient, and informal.

T. WALKER.

I approve of the demurrer as shown that plaintiff can do any thing else but
for the causes assigned, and do not think demur.

T. WALKER.

28. Geo. III.

Declaration in
debt upon cer-
tificates of as-
sessment, for the
sale of brewing
and dairy uten-
sils, for crops
of corn and
grass, agreeable
to a valuation.

SARAH PRINCE
against
RICHARD WELLS.

FOR that where is by certain articles of agreement made, concluded, and agreed upon the fourth day of, &c. A D. 1780, to wit, at, &c. between the said Sarah by the name and addition of, &c. of the one part, and the said Richard by the name and addition of, &c. of the other part (one part of which said articles of agreement, sealed with the seal of the said Richard, the true and Sarah now brings into court here, the date whereof is the day and year aforesaid); the said Sarah did certify, &c. &c. (the purport

ON ARTICLES OF AGREEMENT.

purport of the agreement was, that the defendant was to take the stock of plaintiff at a fair valuation, and pay for it at times particularly mentioned) as by the said articles of agreement, relation being thereto had, will (amongst other things) more fully and at large appear: And the said Sarah in fact saith, that after the making of the said articles of agreement, to wit, on, &c. at, &c. an appraisement and valuation were made of the live and dead stock, and also of the dairy and brewing utensils in the said articles of agreement mentioned, according to the tenor and effect, true intent and meaning thereof; and that the same were thereupon appraised and valued at a large price or sum of money, to wit, the price or sum of one hundred and thirty-three pounds of lawful money of Great Britain, whereof the said Richard then and there had notice, whereby and according to the tenor and effect of the said articles of agreement in that behalf, he the said Richard became liable to pay, or cause to be paid to the said Sarah, the said sum of one hundred and thirty-three pounds within ten days next after such appraisement and valuation as aforesaid; nevertheless the said Richard, although often requested, did not, nor would within the said ten days, pay or cause to be paid to the said Sarah the said sum of one hundred and thirty-three pounds or any part thereof, but wholly refused and neglected so to do, whereby an action hath accrued to the said Sarah to demand and have of and from the said Richard the said sum of one hundred and thirty-three pounds, parcel of the said sum of five hundred and thirty-six pounds above demanded: And the said Sarah in fact further saith, that afterwards, to wit, on, &c. at, &c. an appraisement and valuation were made of the said crops of corn and sward in the said articles of agreement mentioned, according to the tenor and effect, true intent and meaning thereof; and that the said crops of corn were thereupon then and there appraised and valued at a large sum of money, to wit, the sum of three hundred and three pounds of lawful money of Great Britain; and that the said sward was also thereupon then and there appraised and valued at another large sum of money, to wit, the sum of pounds of like lawful money, whereof the said Richard then and there had notice, whereby and according to the tenor and effect of the said articles of agreement in that behalf, he the said Richard became liable to pay, or cause to be paid to the said Sarah a large sum of money, to wit, the sum of pounds of like lawful money, being one moiety of the money due for the said crops of corn, together with the said sum of pounds for the sward, amounting together to a large sum of money, to wit, the sum of pounds of like lawful money, on Christmas-day, that is to say, on the twenty-fifth day of December, in the year last aforesaid, and also another large sum of money, to wit, the sum of pounds, being the residue of the money due for the said crops of corn on Midsummer day, that is to say, on the twenty-fourth day of June, which would be A. D. 1832; nevertheless the said Richard, al-

though often requested, did not, nor would on the said twenty-fifth day of December, A. D. 1781 as aforesaid, pay or cause to be paid to the said Sarah the sum of pounds, or any part thereof, but wholly refused and neglected so to do, whereby an action hath, &c. &c.: And the said Sarah in fact further saith, that the said Richard did not, nor would on the said twenty-fourth day of June, A. D. 1782, pay or cause to be paid to the said Sarah the said sum of pounds (being the residue of the money due for the said crops of corn), or any part thereof, but wholly refused and hath neglected so to do, whereby an action hath, &c. yet, &c.; common conclusion in debt.

25. Geo. III.

Declaration in debt for the penalty of breach of agreement, for the sale of freehold premises, in not producing a complete title.

MIDDLESEX, to wit. William Smith complains of John Britt being, &c. of a pl a that he render to the said William the sum of forty pounds of lawful money of Great Britain, which he owes to and unjustly detains from him; for that whereas by a certain agreement made on the tenth day of, &c. A. D. 1784, to wit, at, &c. the said John by the name and addition of, &c. of the one part, and the said William by the name and addition of, &c. of the other part (one part of which said agreement sealed with the seal of the said John, the said William now brings into court here, the date whereof is the day and year aforesaid) reciting, that whereas the said John was then legally seized in fee of all those several freehold messuages and tenements, &c. &c. (set out the agreement, which in this case stated that William Smith agreed to purchase of the defendant the houses, and that if defendant did not make out a clear title he should forfeit twenty pounds) as by the said agreement, relation being thereunto had, will (amongst other things) more fully and at large appear: And although the said William hath always from the time of making the said agreement hitherto well and truly performed and fulfilled the same in all things therein contained on his part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning thereof, to wit, at, &c.: Yet protesting that the said John hath not performed or fulfilled any thing in the said agreement contained on his part and behalf to be performed and fulfilled, he the said William in fact saith, that the said John, although often requested, did not nor would upon or before the said twenty-fourth day of, &c. produce, nor hath he at any time hitherto produced a clear and perfect or other title in the premises, or to the said freehold messuages or tenements and premises, or any part thereof, or executed a proper conveyance thereof, or any part thereof to him the said William, to hold the same to him the said William, his heirs, and assigns for ever, according to the tenor and effect of the said agreement in that behalf, but hath hitherto wholly refused and neglected so to do, and therein failed and made default, contrary to the tenor and effect, true intent and meaning

of the said agreement, and of the said covenant of the said John by him in that behalf made as aforesaid, whereby and according to the tenor and effect of the said agreement the said John forfeited and became liable to pay to the said William the said sum of twenty pounds of lawful money of Great Britain, together with the costs of the said agreement and all incidental expenses relating thereto: And the said William in fact further saith, that the costs of the said agreement and all incidental expenses thereto, amounted to a large sum of money, to wit, the sum of twenty pounds of like lawful money, making together with the said sum of twenty pounds the sum of forty pounds of like lawful money, whereby an action hath accrued to the said William to demand and have of the said John the said sum of forty pounds above demanded, yet, &c.: Common conclusion in debt.

And the said John, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, *actio non*; because he says that the said John before the said twenty-fourth day of June in the said agreement mentioned, to wit, on, &c. at, &c. was ready and willing, and offered to the said William to produce a clear and perfect title in the law of, in, and to the freehold messuages, tenements, and premises, and to execute a proper conveyance thereof to the said William, to hold to him the said William, his heirs, and assigns for ever, upon his the said William paying to the said John the full sum of two hundred and fifty pounds as and for the purchase money thereof, which of the said William then and there had notice; but that the said William then and there requested and desired the said John not to produce the same or to execute the said conveyance to the said William, and the said William then and there forbade the said John then or ever so to do; and the said William then and there declared to the said John that he would not ever, nor did he ever pay to the said John the said sum of two hundred and fifty pounds as and for the said purchase money; and the said William then and there wholly declined and disavowed the carrying the said agreement in the said declaration mentioned into execution; for which reason, and no other, the said John did not upon or before the said twenty-fourth day of June, in the year aforesaid, produce, nor hath he at any time since produced a clear and perfect or other title in the law of, in, or to the said freehold messuages, tenements, and premises, or any part thereof to him the said William, to hold the same to him the said William, his heirs, and assigns for ever, according to the tenor and effect of the said agreement in that behalf; and this, &c. wherefore, &c. if, &c.

Plea in bar of the defendant's claim, ready and willing, and offering a complete title, but plaintiff declined to produce it, and declined carrying the agreement into execution, saying he would not pay the purchase money.

DEBT.—REPLICATION—REJOINDER.

Replication,
 setting that
 defendant was
 not ready, or
 offered a com-
 plete title; for
 replication, that
 plaintiff was
 ready to com-
 plete the pur-
 chase, according
 to the agree-
 ment.

And the said William saith, that he by reason of any thing by the said John in his said plea above alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him; because protesting that the said plea and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from having his aforesaid action thereof against him the said John; protesting also that the said John was not ready or willing or offered to the said William to produce a clear and perfect title in the law of, in, and to the said freehold messuages, tenements, or premises, or to execute a proper conveyance thereof to the said William, to hold the same to him the said William, his heirs, and assigns for ever, upon his the said William's paying to the said John the full sum of two hundred and fifty pounds, as and for the purchase money thereof, in manner and form as the said John hath in that behalf above alledged; for replication in this behalf the said William saith, that the said William after the making of the said agreement, and from thence and until and upon the said twenty-fourth day of, &c. therein mentioned, was ready and willing to complete the purchase of the said freehold messuages, tenements, and premises therein also mentioned, according to the tenor and effect of the said agreement in that behalf, to wit, at, &c. without this that he the said William requested or desired the said John not ever to produce the same title, or to execute the same conveyance to the said William, or forbid the said John so to do, or declare to the said John, or declare that he would not pay to the said John the said sum of two hundred and fifty pounds as and for the said purchase money, or declined or disavowed the carrying the said agreement into execution in manner and form as the said John hath in his said plea in that behalf alledged: And this, &c. wherefore, &c. and his said debt, together with his damages by him sustained on occasion of the said detaining thereof to be adjudged to him.

GEORGE WOOD.

Replication,
 traversing that
 plaintiff never
 desired the de-
 fendant not to
 produce a com-
 plete title, or
 ever refused to
 pay the purchase
 money.

**Rejoinder, tak-
 ing issue upon
 the traverse.**

And the said John, as to the said plea of the said William above in reply pleaded to the said plea of him the said John above pleaded in bar as before, says, that the said William requested and desired the said John not ever to produce the same title, or to execute the said conveyance to the said William, and forbid the said John so to do, and did declare to the said John that he would not ever pay to the said John the said sum of two hundred and fifty pounds as and for the said purchase money, and declined and disavowed the carrying the same agreement into execution in manner and form as the said John hath above in his said plea in that behalf alledged; and of this he the said John puts himself upon the country, and the said William doth the like, &c.

Upon the trial of this cause defendant proving the facts, the plaintiff submitted to a nonfit.

WILLIAM

DEBT.

WILLIAM WILLIAMS }
against

PRICE THOMAS.

MIDDLESEX, to wit, For that (a) Declaration
whereas on, &c. at, &c. a certain dis- special. as-
course was had and moved by and be- ment to
plaintiff as
case A. B.
vives C.

tween the said Price and the said William of and concerning the duration of the respective lives of one A. B. mother of the said Price, and one C. D. brother of the said William, and upon that discourse it became and was then and there made a question between the said Price and William which of them the said A. B. and C. D. might live the longer; and upon that occasion in consideration that he the said William at the special instance and request of the said Price, had undertaken and faithfully promised the said Price, that in case the said C. D. the brother of the said William should die in the lifetime of the said A. B. he the said William would, within six months from the decease of the said C. D. pay, or cause to be paid to the said Price, the sum of two hundred pounds of lawful money of Great Britain, he the said Price undertook and then and there faithfully promised the said William, that in case the said A. B. should die in the lifetime of the said C. D. he the said Price should and would within six months pay, or cause to be paid to the said William the sum of two hundred pounds of lawful money of Great Britain: And the said William avers, that after the making of the said several promises and undertakings of the said Price and William as aforesaid, to wit, on, &c. at, &c. the said A. B. died, leaving the said C. D. who then and there survived her, whereof the said Price afterwards, to wit, on, &c. at, &c. had notice, whereby and by reason whereof, and according to the said promise and undertaking of the said Price so by him made as aforesaid, he the said Price became liable to pay to the said William the sum of two hundred pounds, so by him promised to be paid on the event aforesaid, within six months from the decease of the said A. B.: Yet the said Price not regarding his said several promises and undertakings so by him made as aforesaid, but contriving, &c. the said William in this behalf hath not as yet paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof to the said William, although six months from the decease of the said A. B. hath long since elapsed, and although to pay the same the said Price, after the making the said several promises and undertakings, and after the expiration of the said six months from the decease of the said A. B. to wit, on, &c. at, &c. was requested by the said William, but he so to do hath hitherto wholly refused, and still refuses, to the damage of, &c.

(a) This precedent is in *Assumpsit*, inadvertently sent and inserted too late to withdraw it.

Hilary Term, 24. Geo. III.

Declaration in **WILLIAM PRISCOE** } **DORSETSHIRE**, to wit. That
 debt for the *against* } whereas the said plaintiff heretofore, to
 penalty in an **JOSEPH HARDY.** } wit, on, &c. was seised in his demesne as
 agreement to of fee of and in the several premises specified in the agreement
 say, &c. to the plaintiff, upon hereafter mentioned, to wit, at, &c. in, &c. and said plaintiff
 his the said being so seised by a certain agreement made the twenty eighth
 plaintiff's con- day of, &c. at, &c. between the said plaintiff and the said de-
 veying, certain fendant (reciting that whereas, &c.) he the said plaintiff did for
 premises, and himself, his heirs, executors, and administrators, covenant, pro-
 executing cer- mise, and agree to and with the said defendant, his heirs, ex-
 tain deeds; a- verment, the ecutors,
 verment, the and administrators, that he the said plaintiff for the several conditions
 deeds being in the said agreement particularly mentioned and expressed, should
 prepared, and and would convey, assign, transfer, and set over unto the said
 plaintiff being and would convey, assign, transfer, and set over unto the said
 willing to ex- defendant, his heirs, and assigns, all and every the said rectory or
 ecute, &c. but parsonage impropriate of P. in the county aforesaid, as the same
 defendant re- therein and herein before particularly mentioned and set forth,
 said, &c. with all and every the appurtenances thereunto belonging, as the
 same were then in the occupation of the said defendant, by virtue
 of the said indenture of lease granted by the said plaintiff to the
 said defendant, and also that he the said plaintiff would sign, seal,
 and deliver all such deeds, writings, and conveyances for the ab-
 solute sale and conveyance of the said premises, and every part and
 parcel thereof, except as in the said agreement is after excepted,
 to him the said defendant, his heirs, and assigns for ever, or to
 such other person or persons as he the said defendant should nomi-
 nate and appoint, and as he the said defendant or his counsel
 learned in the law should reasonably devise, advise, or require:
 And the said defendant did by the said agreement for himself, his
 heirs, executors, and administrators, covenant, promise, and agree
 to and with the said plaintiff, his heirs, executors, and adminis-
 trators, that he the said defendant should and would upon exe-
 cuting the said agreement well and truly pay to the said plaintiff,
 his heirs, executors, and administrators, the sum of forty-seven
 pounds, which would become due for half a year's rent of the said
 premises at Lady-day then next coming, by virtue of the said lease
 granted to the said defendant by the said plaintiff, and also the sum
 of three pounds in part of the said sum of seven hundred pounds to
 be paid to the said plaintiff at the time of executing the said agree-
 ment; and the said defendant for and in consideration of the said
 plaintiff's conveying and assuring the said premises as aforesaid free
 from all incumbrances, did by the said agreement agree to pay, or
 cause to be paid to the said plaintiff, his heirs, or assigns, the sum
 of six hundred and ninety-seven pounds, being the residue of the said
 sum of seven hundred pounds, after deducting thereout the said sum
 of three pounds to be paid as aforesaid, and also that he the said de-
 fendant would assure the payment of the said annuity of seventy
 pounds a year for and during the natural life of said plaintiff, to
 be paid half yearly and every half year, and the same to be paid
 within three weeks after every half yearly payment should become
 due

due as aforesaid, and also that he the said defendant would assure the payment of twenty pounds a year to M. B. as aforesaid, and to pay the same half yearly and every half year during her natural life, and within three, &c. : And it was also in and by the said agreement further agreed, that the deeds of conveyance and all other the necessary writings should be prepared, got ready, and executed, and the consideration money of seven hundred pounds should be paid on, &c. and lastly for the true performance of all and every the articles and agreements in the said agreement contained, said plaintiff and said defendant did by the said agreement for themselves and each of themselves, and for their and each and every of their heirs, executors, and administrators, bind themselves each to the other in the penal sum of five hundred pounds, as by the said agreement, reference being thereto had, will more fully appear : And the said plaintiff in fact saith, that he the said plaintiff hath always since the making of the aforesaid agreement hitherto been and still is willing to convey, &c. unto the said defendant, his heirs, and assigns, all and every the said rectory and parsonage impropriate of, &c. in, &c. as the same are in the aforesaid agreement hereinbefore particularly mentioned and set forth, and all and every the appurtenances thereunto belonging, as the same were in the occupation of said defendant at the time of the said agreement, and to sign, seal, and deliver all such deeds, writings, and conveyances for the absolute sale and conveyance of the said premises, and every part and parcel thereof (except as in the said agreement is excepted) to him the said defendant, his heirs, and assigns for ever, or to such other person or persons as he should or shall nominate and appoint, and as he the said defendant or his counsel learned in the law should or shall reasonably devise, advise, or require, and to do and perform all and every other act, matter, or thing in the said agreement contained on the part and behalf of him the said plaintiff, according to the tenor and effect, true intent and meaning of the said agreement, to wit, at, &c. : And although certain writings were after the making of the said agreement, to wit, on, &c. at, &c. prepared by A. B. as the attorney or agent of them the said plaintiff and defendant respectively, and were then and there ready for execution ; and although the said writings when executed would have been all the proper and sufficient deeds, writings, and conveyances for the absolute sale, &c. of the said premises to agreed to be purchased by said defendant as aforesaid, upon the terms and according to the tenor, &c. of the said agreement ; and although he the said plaintiff was then and there ready and willing to sign, &c. the said writings, and each and every of them for the purpose aforesaid, and then and there offered so to do, and would then and there have signed, &c. the same to the said defendant, if he the said defendant would have accepted the same when so signed and sealed of and from him the said plaintiff : Yet the said plaintiff in fact further saith, that the said defendant then and there, that is to say, on, &c. at, &c. wholly refused, and hath always from thence

hitherto refused, and still doth refuse to accept the said writings, or any other deeds, &c. for the absolute sale, &c. of the said premises so by him agreed for in manner and upon the terms aforesaid, nor did he then and there, or at any other time whatsoever pay, or cause to be paid to the said plaintiff, the sum of six hundred and ninety-seven pounds, the residue of the said sum of seven hundred pounds so agreed to be given and paid by him the said defendant for the said premises as aforesaid, or any part thereof, nor in any manner whatsoever assure the payment of the said several annuities of seventy and twenty pounds in the said agreement mentioned, or either of them, but hath therein wholly failed and made default, contrary to the tenor, &c. of the aforesaid agreement; whereby and by reason of which said several premises, and according to the tenor of the said agreement, the said defendant forfeited and became liable to pay to said plaintiff the sum of five hundred pounds in the said agreement mentioned, and thereby agreed to be paid by the party failing in the performance of the said agreement; and by reason thereof, and of the said agreement, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of five hundred pounds above demanded: Yet, &c. (common conclusion in debt); and he also brings into court here the aforesaid agreement, sealed, &c. and bearing date, &c. in that behalf above-mentioned

V. LAWES.

Declaration, defendant and his wife having disavowed, defendant entered into an agreement, whereby he covenanted that he would behave peaceably towards her, and let her have the managing of his business for their mutual advantage, which he did for some time, and then refused to let her have any thing to do with it.

THOMAS SMELGROVE, late of, &c. was summoned to answer S. Salloway, in a plea that he render to the said Samuel two hundred pounds of lawful money of Great Britain, which he owes to and unjustly detains from him; and thereupon he the said Samuel by A. B. his attorney complains, for that whereas by certain articles of agreement indented, made, concluded, and agreed upon the sixth day of December, A. D. 1787, between the said defendant by the name of, &c. grocer, of the one part, and the said plaintiff by the name of, &c. tanner, a friend and trustee nominated and appointed in this behalf by and on the part of Mrs. Hannah Smellgrove, the wife of the said defendant, of the other part, one part of which said articles of agreement, sealed with the seal of the said defendant, he the said plaintiff now brings here into court, the date whereof is the same day and year aforesaid; after reciting, that whereas some unhappy disputes and differences had then late arisen between the said defendant and the said Hannah his wife, she the said Hannah had been under the necessity of making her complaint against him before a magistrate for a breach of the peace, but upon his agreeing to observe good behaviour towards her for the future, and to enter into a bond or other instrument in a sufficient penalty to keep the peace with her in future as thereafter mentioned, she the said Hannah had consented and agreed to live and continue with her said husband, and assist in conducting, managing, and carrying on his said business of a grocer

ARTICLES of AGREEMENT.

grocer as aforesaid; it was by the said articles of agreement witnessed, that for and in consideration of the premises the said defendant did thereby covenant, promise, and agree to and with the said plaintiff, his executors, and administrators, that he the said defendant should and would at all times hereafter behave in a peaceable manner and conjugal affection towards his said wife, and permit and suffer her to act in and see to the conduct and management of the said business of a grocer, for the mutual benefit and advantage of them the said Thomas and Hannah his wife; that he should not upon any account, or under any pretence whatsoever, molest or interrupt her in the conduct or management of the said business of a grocer, but on the contrary, that he the said defendant should to the utmost of his power be aiding and assisting to his said wife in carrying on the said business for their mutual benefit and advantage, and for the true and due performance of the several covenants, causes, and agreements therein contained on the part and behalf of the said defendant, he the said defendant did by the said articles of agreement bind and oblige himself to the said Samuel, his heirs, executors, and administrators, in the sum or penalty of one hundred pounds of good and lawful money of Great Britain, firmly by the said articles of agreement to be paid to and recovered by the said Samuel, his heirs, executors, and administrators, immediately on sufficient proof being made by the oath of the said Hannah, or any other credible witnesses, that the said defendant should have committed a breach of any of the covenants or agreements in the said articles of agreement contained, relation being thereto had, will more fully and at large appear: And the said Samuel in fact says, that in pursuance of the said articles of agreement, the said Hannah did from the time of the making of the said articles of agreement, for a short time, to wit, until the twelfth day of April 1788, at, &c. in, &c. see to and act in the management of the said business of a grocer, at H. aforesaid, for the mutual benefit and advantage of them the said defendant and Hannah, and that she the said Hannah on, &c. at, &c. was ready and willing and desirous to continue to act in, and see to such conduct and management of her said business of a grocer, and from thence hitherto hath been, and still is so ready and willing and desirous to continue to act in and see to such conduct or management thereof, for the mutual benefit and advantage of the said defendant and Hannah, and then and there during all that time offered so to do to the said defendant, and requested the said defendant to suffer and permit her so to do, whereof the said defendant then and there had due notice; and also the said plaintiff and Hannah have, and each of them hath well and faithfully done, performed, fulfilled, and kept every thing in the said articles of agreement contained on the part and behalf of them, and of each of them to be done, performed, fulfilled, and kept, always from the making of the said articles of agreement hitherto according to the true intent and meaning of the said articles of agreement; yet protesting that the said defendant hath not done, performed, and fulfilled

fulfilled any thing in the said articles of agreement contained on his part and behalf, in fact the said plaintiff says, that he the said defendant en, &c. at, &c. would not, nor did permit and suffer the said Hannah to act in and for the conduct and management of the said business of a grocer, for the mutual benefit and advantage of them the said defendant and his wife, according to the form and effect of the said articles of agreement, and of the said covenant of the said defendant by him in that behalf so made as aforesaid, but then and there wholly refused so to do, and then and there interrupted and molested her in the conduct and management of the said business, and hindered and prevented the said Hannah by force and violence from acting in and from being to the conduct and management of the said business of a grocer, for the mutual benefit and advantage of them the said defendant and Hannah, contrary to the form and effect of the said articles of agreement, and of the said covenant of the said defendant by him in that behalf made as aforesaid, whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of two hundred pounds, above demanded. And whereas, &c. &c. (this Count exactly the same as the last, then proceed thus) and the said plaintiff further says, that after the said defendant had so broken his said covenant last-mentioned with the said plaintiff as last aforesaid, to wit, on, &c. she the said Hannah made proof by oath that the said defendant had committed such breach as aforesaid of his said covenant and agreement so broken as last aforesaid, whereof the said defendant had then and there due notice, whereby an action hath, &c. resulted of the said two hundred pounds above demanded; yet, &c. suit, &c.

V. L. W. L. S.

2d Count.

Declaration in debt for the penalty for non-performance of articles of agree- LONDON, s/. Joseph Allin and Henry Contracts, assignees of the estate and effects of Thomas Baxter, a bankrupt, within the true intent and meaning of the several statutes now and now in force concerning bankrupts, some or one of them complain of

that he render to them one hundred and fifty pounds of lawful money of Great Britain, which he owes to and unjustly detains from them: for that whereas the said Joseph and Henry, before and at the time of making the memorandum of agreement hereafter next mentioned, were, as such assignees as aforesaid, lawfully possessed of the fixtures, furniture, stock, and other things in the said memorandum mentioned, and thereby agreed to be sold to the said John, and which said fixtures, furniture, stock, and other things, bankrupt, who had been in the possession of a tavern, on a lease granted him by one A. B. against defendant for not fulfilling the agreement entered into by him for taking the lease of the tavern, which the plaintiffs agreed to get assigned from A. B. to defendant, and all the fixtures to be valued by two indifferent persons, and also the fixtures, the plaintiffs were to clear the house of all rent and taxes due and were to bear half the expenses attending the assignment of the lease, but defendant afterwards refused to perform any of the conditions; *per quod* the house remained unlet, and the fixtures were sold for a less price than they had been valued to the defendant.

at

at the time of making the said memorandum of agreement were in and upon the messuage and premises in the said memorandum also mentioned, and thereby agreed to be assigned to the said John, and of which said messuage and premises, with the appurtenances, John Calvert, esquire, Peter Calvert, Edward Barnes, and Jeremiah Marell, at the time of making the said memorandum of agreement, were lawfully possessed for the rest, residue, and remainder of a certain term of years, to wit, the term of eighteen years then to come therein and unexpired, and theretofore thereof granted to one Edward Toomer and his assigns, by George Loyd and John Booth, by virtue of a certain indenture of lease thereof made between the said George Loyd and John Booth of the one part, and the said Edward Toomer of the other part, and bearing date the twenty fifth day of March 1778; which said indenture, by virtue of divers assignments thereof afterwards, came to and vested in the said Thomas Baxter, by whom the same was afterwards, and before he so became bankrupt as aforesaid, duly assigned to the said John Calvert, Peter Calvert, Edward Barnes, and John Marell, who before and at the time of making the said memorandum of agreement hereafter next mentioned had duly authorized and empowered the said Joseph and Henry to contract and agree for the assignment of the said indenture of lease to the said John Wolfe, to wit, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap; And the said Joseph and Henry further say, that being so possessed of the said fixtures, furniture, stock, and other things herebefore mentioned and alluded to, and being so authorized and empowered to contract and agree for the assignment of the said indenture of lease as aforesaid, by a certain memorandum of agreement of the said indenture made the third day of October, in the year of Our Lord 1785, to wit, at London, in the parish and ward aforesaid, between the said Joseph and Henry, as such assignees as aforesaid, of the one part, and the said John Wolfe of the other part (one part of which said memorandum of agreement, sealed with the seal of the said John Wolfe, and bearing date the day and year aforesaid, the said Joseph and Henry now bring into court here), it was agreed between the said Joseph and Henry, and the said John Wolfe as follows, that is to say, *First, the said Joseph and Henry, in consideration of twenty-one pounds to them in hand paid, and of the further sum of one hundred and fifty-nine pounds to be paid as thereinafter was mentioned, did agree and promise to procure the said John Wolfe a proper assignment in the law of the lease and premises of the King's Head tavern, situate in White Horse-court, in the parish of St. Olives, Southwark, that is to say, of the said indenture of lease and premises so granted by the said George Loyd and John Booth as aforesaid, for all the residue of the term of years therein then to come and unexpired, and as the same was then late in the tenure or occupation of the said Thomas Baxter, and did further promise and agree to let the said John Wolfe into peaceable and quiet possession of the said lease and premises on or before the tenth day of November next ensuing the date of the said memorandum*

randum of agreement : Secondly, that all the fixtures, with household furniture, should be taken in the usual manner, that is to say, by the valuation of two appraisers to be indifferently chosen one by each party or their umpire : Thirdly, that the stock of beer called porter should be taken at and after the rate of thirty shillings by the barrel, and the stock of wine, spirituous liquors, ale, amber, &c. should be taken at prime cost by bills of parcels, the amount of which it was agreed should not exceed thirty pounds : Fourthly, that all rent and taxes should be cleared by the said assignees, that is to say, by the said Joseph and Henry up to the day of the said John Wolfe taking possession of the premises as aforesaid : Fifthly, that the expences of the assignment, and other incidental expences which might be incurred at the time of taking possession of the said premises, should be equally paid and divided by the parties to the said memorandum of agreement share and share alike : Sixthly, that the said John Wolfe did, by the said memorandum of agreement, promise and agree to and with the said Joseph and Henry as follows, that is to say, to accept of the said assignment of the lease, and to take possession of the said house and premises at the time thereinbefore mentioned and agreed, and to pay for the same one hundred and fifty-nine pounds, exclusive of the said twenty-one pounds paid as a deposit, making together the sum of one hundred and eighty pounds, and also the amount of the fixtures, household furniture, stock in trade, &c. ; and lastly, for the performance of that agreement the said parties to the said memorandum of agreement did thereby mutually bind himself to the other in the sum of one hundred and fifty pounds to be paid to the other in case of a breach in that agreement, and that the same should be made a rule of his majesty's court of King's Bench, as by the said agreement (reference being thereto had) may more fully and at large appear : And the said Joseph and Henry protesting that the said J. W. hath not performed or fulfilled, &c. &c. in fact say, that although after the making of the said memorandum of agreement, and on the day in the said memorandum for that purpose limited, to wit, on, &c. next ensuing the date of the said memorandum, and in the said year 1785, to wit, at, &c. in, &c. they the said Joseph and Henry did procure, and caused to be made, prepared, and executed in the said John Wolfe, that is to say, from the said J. C. P. C. E. B. and F. M. in whom the same was so vested as aforesaid, a proper assignment in the law of the said lease and premises of the said King's Head tavern in the said memorandum of agreement mentioned, for all the residue of the said term of years then to come and unexpired, and as the same were then late in the tenure and occupation of the said T. B. as aforesaid ; and although the said Joseph and Henry, and also the said J. C. P. C. E. B. and F. M. were then and there ready and willing, and offered to let him the said J. W. into peaceable and quiet possession of the said lease and premises, and required him to accept of and take the same ; and although the said J. W. could and might have then and there taken and accepted of the said lease and premises ; and although

though the said fixtures and household furniture in the said memorandum of agreement mentioned were then and there valued in the usual manner, and according to the terms of the said memorandum of agreement, that is to say, by two appraisers indifferently chosen by each party to the said memorandum, to wit, by one James Lucas, on the part of the said Joseph and Henry, and one Theodore Campbell, on the part of the said J. W. and upon such valuation did then and there amount to a large sum of money, to wit, the sum of two hundred and thirty pounds; and although they the said Joseph and Henry then and there tendered and offered to deliver to the said J. W. and to suffer and permit him to take the same at and according to such valuation thereof (whereof and of the amount of which valuation, the said J. W. then and there had notice); and also all the said stock of beer called porter, in the said memorandum of agreement mentioned, at and after the rate of thirty shillings for every barrel, and then and there amounting to a certain other large sum of money, to wit, the sum of twenty pounds; and also the said stock of wine, spirituous liquors, ale, amber, &c. in the said memorandum of agreement mentioned, at their respective prime costs, by bills of parcels amounted to a sum of money not exceeding thirty pounds, to wit, the sum of twenty pounds, whereof the said J. W. also then and there had notice; and although they the said Joseph and Henry cleared all the rent and taxes (that is to say, the rent and taxes of and for the said several premises in the said memorandum of agreement specified) up to the said tenth day of, &c. when the said J. W. was by the said memorandum to take possession of the said premises as aforesaid; and although they the said Joseph and Henry were then and there ready and willing, and offered to bear, pay, and divide equally the expenses of preparing the said agreement, and other incidental expenses incurred at the time that the said J. W. should take possession of the said premises; and although they the said Joseph and Henry have done and performed, and been ready and willing to do and perform all other things in the said memorandum of agreement contained on their part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning of the said memorandum of agreement, to wit, at, &c.: Yet they the said J. and H. in fact further say, that the said J. W. did not then and there, that is to say, on the said tenth day of, &c. or at any other time, accept or take the said assignment of the said lease and premises in the said memorandum of agreement mentioned, nor did he then and there, or at any other time, take or accept the possession of the said premises, or any part thereof, or pay to the said Joseph and Henry or either of them the said one hundred and fifty-nine pounds in the said memorandum mentioned on the aforesaid amount of the said fixtures, household furniture, and stock in trade hereinbefore and in the said memorandum mentioned, or any part thereof, but on the contrary then and there, and always from thence hitherto hath wholly neglected and omitted, and absolutely and positively refused so to do, or ever to complete

plete and carry into execution the said bargain or agreement so made by him as aforesaid, and hath therein wholly failed and made default, contrary to the tenor and effect, true intent and meaning of the said memorandum of agreement, and in breach of the same, to wit, at, &c.; and whereby the said *indenture of lease, and the aforesaid fixtures, furniture, stock, and other things* in the said memorandum of agreement mentioned, and so appraised and valued as aforesaid, remained and continued unsold and undisposed of a long space of time, and were ultimately at and for much less money than the same were to sold and appraised to the said J. W. as aforesaid, and the said Joseph and Henry were necessary put to the trouble and expence of *procuring and preparing such assignment of the said lease, and making such appraisement* as aforesaid, without deriving any benefit or advantage from the same, and were afterwards put to the expence of re-appraisement of the said fixtures, &c. so appraised to the said J. W. as aforesaid; whereby and according to the tenor and effect of the said memorandum of agreement, the said John forfeited and became liable to pay to the said Joseph and Henry the said sum of fifty pounds in the said memorandum mentioned, and thereby agreed to be paid on breach of the said agreement; and thereby and by reason of the said memorandum of agreement, an action hath accrued to the said Joseph and Henry to demand and have of and from the said J. W. the said sum of fifty pounds, parcel of the said one hundred and fifty pounds above demanded: And whereas the said Joseph and Henry, be-

2d Count,
agreement
take the
fixtures only.

to
fix-

fore and hereinafter mentioned, were, as such assignees as aforesaid, lawfully possessed a certain other fixtures, &c. then being in and upon a certain other house and premises, commonly called and known by the name of the King's Head tavern, situate in, &c. and thenceforth in the occupation of the said Thomas Baxter, as keeper of the said tavern: And the said Joseph and Henry further say, that being so possessed of the said last-mentioned fixtures, &c. by a certain other memorandum of agreement for the sale thereof from the said Joseph and Henry to the said J. W. made the said third day of, &c. between the said, &c. &c. (one part of which said last-mentioned memorandum, &c.) it is, (amongst other things) agreed between the said Joseph and Henry, and the said J. W. as follows, that is to say, that all the said last-mentioned fixtures, &c. should be taken (that is to say purchased) by the said J. W. of and from the said Joseph and Henry, in the usual manner, that is to say, by the valuation of two appraisers to be indifferently chosen, one by each party or their umpire, and that the said last-mentioned stock of beer, &c. &c.; and the said J. W. did also, by the said last-mentioned memorandum of agreement, promise and agree to and with the said Joseph and Henry (amongst other things) as follows, that is to say, to pay unto them the said Joseph and Henry the amount of the said last-mentioned fixtures, &c. on or before, &c. next ensuing the date of the said last-mentioned memorandum of agreement; and for the true performance,

formance, &c. &c. &c. (the remainder of this Count like the first, only omitting what is in *Italic*.) And whereas, &c. (Money laid out, expended, &c.); yet, &c. (Common conclusion in debt.)

V. LAWES.

MIDDLESEX, *ff.* The right honourable John Stuart, baron Cardiff, commonly called lord viscount Mountstuart (having privilege of parliament), was summoned to answer Francis Todory in a plea that he render to the said Francis *sixteen thousand six hundred and fifty pounds* of lawful money of Great Britain, which he owes to and detains from him the said Francis, &c.; that whereas *before and at the time of the making of the two several agreements and sales hereafter next mentioned*, the said baron (1) was envoy extraordinary and minister plenipotentiary of our (2) *sovereign* lord the king at the court of Turin, and (3) as such envoy and minister (1) *had* appointed the said Francis to the command of a certain (5) private ship of war theretofore called, &c. but at the time of the making of the agreement hereafter next mentioned called the St. George, lying and being in the port of Nice, and carrying English colours, to proceed in the said (6) vessel according to the orders which he the said Francis should receive from the said baron, which command the said Francis had accordingly accepted from the said baron; and thereupon afterwards, and whilst the said baron was such envoy and minister as aforesaid, by a certain (7) deed or agreement made between the said Francis and the said baron, and sealed and executed, that is to say, by the said baron, on, &c. at, &c. and by the said Francis, on, &c. at, &c. (one part of which said (8) deed or agreement, sealed with the seal of the said baron, the said Francis now brings into court here) he the said Francis bargained and sold unto the said baron, *by the name of the right honourable John Lord Cardiff, commonly called lord viscount Mountstuart, his Britannic majesty's envoy extraordinary and minister plenipotentiary at the court of Turin*, in consideration of the sum of one hundred and ten pounds sterling paid unto him the said Francis on or before the sealing and delivering of the said (9) deed or agreement (the receipt of which he did thereby acknowledge) all that the said (10) ship or vessel, called, &c. together with all her guns, masts, rigging, stores, and every thing else belonging to the said (11) ship or vessel, giving and thereby granting to the said baron full power and absolute authority to sell and dispose of the said (12) vessel, together with all her guns, masts, rigging, stores, and every thing else belonging to her, subject however to the conditions therein and herein-after mentioned; and the said Francis *having so accepted of such command of the said vessel as aforesaid*, he the said Francis did, by the said (13) deed or agreement, consent and agree to receive on board the said (14) vessel whatever goods, wares, or merchandizes which might be sent to him the said Francis by the said baron, his agents, or others, and to carry the same on board the said (15) vessel

Declaration, the plaintiff had agreed to serve the defendant on board a ship for so much money as should be allowed by his majesty's consul at L. no consul was appointed, and the defendant refused to give the plaintiff any satisfaction for his service, &c. &c.
(1) "to being such"
(2) "said"
(3) "also"
(4) "having"
(5) "other"
(6) "last-mentioned"
(7) "other"
(8) "last-mentioned"

(9) "last-mentioned"
(10) "last-mentioned"
(11) "last-mentioned"

(12) "last-mentioned"

(13) "last-mentioned"
(14) "last-mentioned"
(15) "last-mentioned"

(16) "last-mentioned"

(17) "last-mentioned"

(18) "last-mentioned"

(19) "last-mentioned"

(20) "last-mentioned"

(21) "last-mentioned"

(22) "last-mentioned"

(23) "therein"

(24) "last-mentioned"

(25) "last-mentioned"

(26) "last-mentioned"

(27) "last-mentioned"

(28) "last-mentioned"

(29) "last-mentioned"

(30) "last-mentioned"

(31) "last-mentioned"

(32) "last-mentioned"

(33) "last-mentioned"

vessel to such port or ports as he the said Francis should be directed by him or them (the damages of the seas excepted) for which the said Francis was to be paid by the said baron as was paid by the council of Leghorn or Genoa to other vessels in the same situation, the same to be regulated by his Britannic majesty's consul at Leghorn; and lastly it was in and by the said (16) deed or agreement agreed by and between the said Francis and the said baron, that notwithstanding the absolute sale of the said (17) vessel and her appurtenances as aforesaid, if there arose a sufficient sum by the gains of the said (18) vessel in one year to repay the said baron the said (19) sum of one hundred and ten pounds sterling, or that by any other means the said Francis should reimburse or cause to be paid to the said baron the said (20) sum of one hundred and ten pounds sterling, within the expiration of twelve calendar months from the signing thereof, the said (21) sale was then to become void and of no effect, and the said Francis was again to become absolute master of his said (22) vessel, anything (23) contained therein to the contrary notwithstanding, as by the said (24) deed or agreement (reference being thereunto had) will more fully and at large appear: And the said Francis in fact saith, that he the said Francis having been so appointed to the command of the said (25) ship or vessel as aforesaid, for the purpose aforesaid, and having also accepted of such command, he the said Francis remained and continued in such command under the aforesaid deed or agreement, from the making and executing thereof by the said baron for a long space of time, to wit, until, &c. and did during all that time receive on board the said (26) ship or vessel whatever goods, wares, and merchandizes were sent to him by the said baron, his agents, or others, and did carry the same on board the said (27) ship to such port and ports as he the said Francis was by him or them directed, according to the tenor and effect, intent and meaning of the said (28) deed or agreement, to wit, at, &c. § *And the said Francis avers, that during the time aforesaid there was not any vessel or vessels in the same situation with the said ship or vessel in the said deed or agreement mentioned, paid by the consul of Leghorn and Genoa, by and under the regulation of his British majesty's consul at Leghorn, nor did the said consul pay or regulate the pay of or for the said ship or vessel in the said deed or agreement mentioned; but the said Francis in fact further saith, that he the said Francis reasonably deserved to have and be allowed for and on account of the said ship or vessel, and such use thereof as aforesaid, a certain large sum of money, to wit, the sum of forty-two pounds of lawful money of Great Britain, over and besides sufficient to reimburse and pay the said baron the said sum of one hundred and ten pounds in the said deed or agreement mentioned, and which was thereby and by reason of such gains of the said ship or vessel as aforesaid reimbursed and paid to the said baron, according to the tenor and effect of the said deed or agreement, to wit, at, &c. &c. whereof the said baron afterwards, to wit, on, &c. there had notice; whereby an action accrued to the said Francis to demand and have of and from the said baron*

ron the said sum of forty-two pounds, parcel of the said sixteen thousand six hundred and sixty pounds above demanded: And 2d Count.
whereas, &c. &c. (Go on with the second Count same as the first, omitting what is in Italic, and inserting in lieu thereof what is in the margin, till you come to this § mark, when go on as follows): And the said Francis further says, that after the making of the said last-mentioned deed or agreement, and within twelve calendar months from the signing thereof, to wit, on, &c. the said baron had been and was reimbursed and paid the said sum of one hundred and ten pounds in the said last-mentioned deed or agreement specified; whereby and by force of the said last-mentioned deed or agreement, the said Francis became and was from thenceforth entitled to such pass as in the said last-mentioned deed or agreement is specified for his own use and benefit, and being so entitled afterwards, to wit, on, &c. there was due, owing, and payable from the said baron to him the said Francis for and on account of such pay from the time of the said last-mentioned sum of one hundred and ten pounds being so reimbursed and paid as afore said, a large sum of money, to wit, the further sum of forty-two pounds of like lawful money, to wit, at, &c. there had notice, whereby an action accrued to the said Francis, &c. &c. &c.: And whereas also heretofore, to wit, on, &c. 3d Count
the said Francis and one John Cordona, and one Gabriel Pous, were owners and proprietors of a certain other ship or vessel theretofore called, &c. but then called the St. George, carrying English colours, and the said Francis then and there had a certain lien and demand upon the said last-mentioned ship or vessel to a certain amount, to wit, to the amount of two hundred and seventy-three pounds fifteen shillings and threepence of lawful money of Great Britain, for and on account of certain expences and disbursements relative to the said last-mentioned ship or vessel, and the said baron was then and there envoy extraordinary and minister plenipotentiary of our said lord the now king at the court of Turin; and thereupon afterwards, to wit, on, &c. the said Francis, for and on account of himself and the said John Cordona, and Gabriel Pous, the other part owners of the said last-mentioned ship or vessel, and by and with their privity and consent, lawfully bargained and sold the said last-mentioned ship or vessel to the said baron, and the said baron, by a certain then agent of him the said baron in that behalf, that is to say, by one John Tidney, Esquire, his Britannic Majesty's consul at Leghorn aforesaid, then and there bought the said last-mentioned ship or vessel of the said Francis at and for the price or sum of three thousand dollars of eight rials of the then current money of Leghorn, to be paid in manner following, that is to say, the sum or quantity of twelve of such dollars twelve sols and two deniers of the said current money of Leghorn, part of the said three thousand dollars, amounting in value to a large sum, to wit, the sum of two hundred and seventy-three pounds fifteen shillings and threepence of lawful money of Great Britain, to be paid (that is to say) by the said baron to the said Francis, for and on account

DEBT.—ON SPECIALTIES.

of his said demand for expences and disbursements relative to the said last mentioned ship or vessel, and the remaining one thousand seven hundred and sixty-three dollars seven sols and ten deniers to be withheld in the hands of the said consul by way of deposit, to be afterwards paid and divided by him to and amongst the said Francis, and the said John Cordova and Gabriel Pous: Yet the said Francis in fact further saith, that the said one thousand two hundred and sixty-three dollars twelve sols and two deniers, so stipulated to be paid unto him the said Francis as aforesaid, were not, nor hath any part thereof then and there, or at any other time paid to him the said Francis, either by the said consul or the said baron, or by any other person on his behalf, but the same are wholly due and owing unto him the said Francis, whereby an action hath accrued to the said Francis to demand and have of and from the said baron the said sum of two hundred and seventy-three pounds fifteen shillings and threepence of lawful money of Great Britain, being the value in such money of the said one thousand two hundred and sixty-three dollars thirteen sols and two deniers so agreed to be paid to him the said Francis as aforesaid, other parcel of the said sum of sixteen thousand six hundred and sixty pounds above demanded: And whereas the said baron afterwards, to wit, on, &c. became and was indebted to the said Francis in another large sum, to wit, in the sum of two thousand pounds of like lawful money of Great Britain, for the use and hire of a certain other ship or vessel by the said Francis before that time let to hire to the said baron at his special instance and request, and by him the said baron under that letting to hire had and used for a long space of time; whereby an action hath accrued to the said Francis to demand and have of and from the said baron the said last-mentioned sum of money, other parcel of the said sum of sixteen thousand six hundred and sixty pounds above demanded: And whereas the said baron afterwards, to wit, on, &c. was indebted to the said Francis in a certain other large sum of money, to wit, in the further sum of two thousand pounds of like lawful money of Great Britain, for the freight of divers goods, wares, &c. by the said Francis before that time carried, transported, and conveyed in and by a certain other ship or vessel of him the said Francis for the said baron, and at his like special instance and request; whereby an action hath accrued, &c. &c.: And whereas the said baron afterwards, to wit, on, &c. became and was indebted to the said Francis in a certain other large sum of money, to wit, the sum of one thousand pounds of like lawful money of Great Britain, for certain wages before that time due and payable from the said baron to the said Francis for his service before then done and performed as captain and commander in and on board of a certain other ship or vessel, on the retainer of the said baron, and at his like special instance and request; whereby an action accrued, &c. &c.

7th Count, And whereas, &c. for work and labour, care and diligence, &c.

8th Count, And whereas, &c. goods sold and delivered.

9th Count, And whereas, &c. goods bargained and sold.

10th Count, And whereas, money laid out, expended,

4th Count.

5th Count.

6th Count.

ARTICLES OF AGREEMENT.

pended, and paid. 11th Count, And whereas, &c. money had and received; an account stated; and common conclusion.

V. LAWEs.

NOTTINGHAMSHIRE, to wit. R. J. against V. W. in a plea that he render to him the said plaintiff fifty pounds of, &c. which he owes to and unjustly detains from him; for that whereas by certain articles of agreement indented, made, and agreed upon the twelfth day of September A. D. 1788, at, &c. in, &c. between the said Richard (by the name and description of, &c.) of the one part, and the said defendant (by the name and description of, &c.) of the other part (one part of which said articles of agreement, sealed with the seal of the said defendant, he the said plaintiff now brings here into court, the date whereof is the same day and year last aforesaid), it was agreed upon as follows, *viz.* first, the said plaintiff, for the considerations thereafter mentioned, did, for himself, his executors and administrators, covenant, promise, and agree to and with the said defendant, his executors, administrators, and assigns, that he the said plaintiff, his executors, administrators, and assigns, should or would deliver or cause to be delivered unto the said defendant, his executors, administrators, and assigns, at his dwelling-house in C. aforesaid, one hundred and eighty couple of good, fresh, and marketable rabbits, upon Wednesday morning in every week, between the twentieth of October and seventeenth of February then next ensuing, and not to sell or deliver rabbits to any other person or persons residing in C. aforesaid during that time in consideration, whereof the said defendant for himself, his executors and administrators, did thereby covenant, promise, and agree to and with the said plaintiff, his executors and administrators, to accept of the said rabbits, and to pay for the same either at the time of the delivery, or on the Wednesday in the week next following, after the rate of tenpence a couple, and to return all the skins well cured and dried unto the said plaintiff, his executors, administrators, and assigns, and also to give unto the said plaintiff, or the person who should from time to time bring the said rabbits, one good meal and a quart of ale every time he should so bring the same; and for the true performance of the covenants and agreements aforesaid, each and either of the said parties thereto did bind and oblige himself, his heirs, executors, and administrators, unto the other of them, his heirs, executors, and administrators, in the penal sum of fifty pounds of lawful money of Great Britain, as by the said articles of agreement, relation being thereunto had, will more fully appear: And the said Richard in fact says, that he always, from the time of making the said agreement hitherto hath well and truly done, observed, performed, bestowed, and fulfilled all and every thing in the said articles of agreement contained on his part and behalf to be done, performed, observed, bestowed, and fulfilled, according to the form and effect of the said articles of agreement, to wit, at, &c. in, &c.; protesting that the said defendant hath

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Breach 1st,
plaintiff deli
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ment, but
fendant's
pay, &c.

DEBT.—ON SPECIALTIES.

not done, &c. any thing in the said articles of agreement contained, on his part and behalf to be done, &c. according to the form and effect of the said articles of agreement; he the said plaintiff in fact says, that in pursuance of the said agreement he the said Richard, after the twenty-eighth of October, in the year aforesaid, to wit, on, &c. (being a Wednesday) delivered and caused to be delivered in the morning of the said day to the said defendant, at his said dwelling-house at C. aforesaid, one hundred and eighty couple of good, fresh, and marketable rabbits, which he the said defendant then and there accepted and received; and the said plaintiff afterwards, to wit, on, &c. (being the Wednesday following) delivered and caused to be delivered, in the morning of the said day, to the said defendant, at his said dwelling-house in C. aforesaid, one hundred and eighty couple of good, fresh, and marketable rabbits, which he the said defendant then and there accepted and received, according to the form and effect of the said articles of agreement, to wit, at, &c. in, &c. : But he the said plaintiff further says, that he the said defendant did not at either of the several times of the said respective deliveries of the said three hundred and sixty couple of rabbits to the said defendant as aforesaid, or on the Wednesday in the respective weeks next following the same, pay for the same three hundred and sixty couple of rabbits so delivered as aforesaid, or for any part thereof, after the rate of tenpence a couple, according to the form and effect of the said articles of agreement, but on the contrary thereof, although often requested, wholly refused to pay for the same or any part thereof, and wholly neglected so to do, and therein failed and made default, contrary to the form and effect of the said covenant in that behalf made as aforesaid, to wit, at, &c. in, &c. : And the said plaintiff, according to the form of the statute in such case made and provided, further says, that he the said plaintiff afterwards, to wit, on, &c. (being Wednesday) was ready and willing to deliver or cause to be delivered unto the said defendant, at his dwelling-house in C. aforesaid, one hundred and eighty couple of good, fresh, and marketable rabbits, and then and there, in the morning of the said last-mentioned day, tendered and offered to deliver the same to the said defendant, to wit, at, &c. in, &c. but he the said defendant would not then, or at any other time since accept the said one hundred and eighty couple of rabbits so tendered and offered to be delivered to him as last aforesaid, or pay for the same or any part thereof, according to the form and effect of the said articles of agreement, but on the contrary thereof wholly omitted, refused, and neglected so to do, and therein made default, and then and there wholly discharged the said plaintiff from delivering any more rabbits, according to the form and effect of the said agreement, to wit, at, &c. in, &c. contrary to the form and effect of the said articles of agreement so made between them as aforesaid : And the said plaintiff, according to the form of the statute in such case made and provided, further says, that he the said plaintiff, from the twenty-eighth day of October to the thirty-first of December, in the year aforesaid, did deliver

ad Breach, (according to Stat. 8 and 9. Will. c. 3.) that he was ready and offered to deliver others, which defendant refused to accept, &c. &c.

ARTICLES OF AGREEMENT.—HOUSE CARPENTERS.

deliver and cause to be delivered to the said defendant at his dwelling-house in C. aforesaid, one hundred and eighty couple of good, fresh, and marketable rabbits, upon Wednesday morning in every week, according to the form and effect of the said articles of agreement but he says that he the said defendant hath not returned all or any part of the skins of the said rabbits so delivered to the said defendant as aforesaid, well cured and dried, or in any other manner, to him the said plaintiff, according to the form and effect of the said articles of agreement, but on the contrary thereof hath, although often requested, wholly refused, neglected, and omitted so to do, and therein wholly failed and made default, to wit, at, &c. in, &c. contrary to the form and effect of the said articles of agreement so made as aforesaid; by reason and means of which said premises, and by force of the said articles of agreement, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of fifty pounds above demanded: Yet the said defendant, although often requested, hath not yet paid to the said plaintiff the said sum of fifty pounds above demanded, or any part thereof, but to pay the same or any part thereof to the said plaintiff hath hitherto wholly refused and still doth refuse, to the damage of the said plaintiff of ten pounds, &c.

And the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. *and craves oyer of the said articles of agreement, and it is read to him in these words, that is to say, [copy the agreement verbatim] which being read and heard, the said defendant says assis non;* because he says, that he the said defendant hath well and truly performed all and singular the covenants and agreements in the said articles of agreement comprised and mentioned, which on the part and behalf of the said defendant were or ought to be performed in all things, according to the true intent and meaning of the said articles of agreement, and of this he the said defendant puts himself upon the country.

Plea of assis non of the said articles.

T. BARROW.

If the defendant has no particular reason for craving oyer of the articles, the plea is better be shortened by the omission of the parts in *Italic*.

In debt on bond for performance of covenants the conclusion should be with a verification, but in this case the conclusion should be to the country.

In the King's Bench, Trinity Term, 32. Geo. III.

LONDON, to wit. Charles Wheeler, late of Bath, in the county of Somerset, carpenter, was summoned to answer unto Sophia Priscilla Lee, Charlotte Elizabeth Lee, Harriet Lee, and Ann Lee, in a plea that he render to them the said plaintiffs three hundred pounds of lawful money of Great Britain, which he owes articles of agreement, for not doing his part of the work in altering a house, whereby the workmen were delayed in theirs, and plaintiff was put to expence of hiring lodgings, and in business of keeping a boarding-school.

Declar. original in B. against a house carpenter debt, for the salary in fee.

DEBT.—ON ARTICLES OF AGREEMENT.

to and unjustly detains from them; and thereupon the said plaintiffs by H. B. Scudamore their attorney, complain; for that whereas before and at the time of making and executing of the agreement hereafter mentioned, the said plaintiffs were about to alter and improve a certain house at Bath aforesaid, in the said county of Somerset, to be called Belvidere-house, and had on that occasion caused and procured certain plans, elevations, drawings, and written instructions for the making of the said alterations and improvements to be designed, made, and drawn up by one Thomas Baldwin, an architect by them employed in their behalf; whereof the said Charles before and at the time of executing the said articles of agreement hereafter mentioned had notice, to wit, at London aforesaid, in the parish of St. Mary-le-bow, in the ward of Cheap, which said written instructions, so far as the same relate to the work which under the agreement hereafter mentioned was to be done by the said Charles Wheeler, are to the following effect, to wit, rough carpenter's work, joist to the drawing room and school-room, nine by two; joist over the larder and part of the beer-cellar, four by three; joist over the school-room, drawing-room, and best parlour, nine by two; &c. &c. &c.; and the said plans, elevations, drawings, and written instructions for the making of the said alterations and improvements being so made and prepared as aforesaid heretofore, to wit, on the second day of May, in the year of Our Lord 1785, at London aforesaid, in the parish and ward aforesaid, by certain articles of agreement then and there made between the said plaintiffs (by the names and descriptions of Sophia Lee, Charlotte Lee, Harriet Lee, and Ann Lee, spinners, all of the city of Bath, in the county of Somerset) of the one part, and Thomas Lewin, the said Charles Wheeler, one Richard Singers, and one Samuel Sandbury (by the several names and descriptions of Thomas Lewin, rough mason, Charles Wheeler, carpenter, Richard Singers, freestone-mason, and Samuel Sandbury, plasterer, all of the city of Bath, in the said county) of the other part, one part of which said articles of agreement, sealed with the seal of the said Charles Wheeler, and bearing date the day and year aforesaid, together with the said plans, elevations, drawings, and written instructions thereby referred to, the said plaintiffs now bring into court for the consideration therein mentioned, the said T. L. C. W. R. S. and S. S. jointly, and each and every of them separately for himself, his heirs, executors, administrators, and assigns, did agree to execute, or cause to be executed all and every part of the several works shewn and described in the said plans, elevations, and other drawings and written instructions, designed, made, and drawn up by the said T. B. architect as aforesaid, *also conformable to the directions which should or might be from time to time given by the said plaintiffs or the said T. B. to the said T. L. C. W. R. S. and S. S. or any one of them*, in a good workmanlike and masterly manner, with materials the best of their kind in every respect whatsoever, the whole of which said work above described and thereby contracted for should be done and completed

HOUSE CARPENTERS.

on or before the tenth day of December next ensuing the date of the said agreement: And it was thereby further agreed by and between the said parties, when and as soon as all the before-mentioned works should be completed, the said plaintiffs, their heirs, executors, administrators, or assigns, should pay or cause to be paid to the said T. L. C. W. R. S. and S. S. their heirs, executors, administrators, or assigns, the sum of three hundred pounds on account of the same, and on the tenth day of June following the further sum of two hundred pounds, and on the tenth day of December, in the year of Our Lord 1786, the further sum of two hundred pounds, which said several sums of three hundred pounds, two hundred pounds, and two hundred pounds as aforesaid, should and would be a full compensation to the said T. L. C. W. R. S. and S. S. for all the said works; and for the due performance of all the foregoing articles in every respect, the said T. L. C. W. R. S. and S. S. each for himself, his heirs, executors, administrators, and assigns, did bind himself and them to the said plaintiffs, their heirs, executors, administrators, and assigns, in the penal sum of three hundred pounds of lawful money of Great Britain, in which said articles of agreement there was then and there a certain indorsed memorandum whereby it was agreed that the said T. L. should receive the sum of two hundred pounds for the performance of his part of the said contract, and the said C. W. should receive the sum of three hundred pounds for the performance of his part of the said contract as by the said articles of agreement and memorandum thereon indorsed, and the said plans, elevation, drawings, and written instructions accompanying the same, reference being thereto had, will more fully appear: And the said plaintiffs in fact say, that although the said plaintiffs, since the making of the said articles of agreement hitherto have been ready and willing to do, perform, and fulfil all things in the said articles of agreement contained on their part and behalf to be done, performed, and fulfilled, according to the true intent and meaning of the said articles, to wit, at London aforesaid, in the parish and ward aforesaid; and although the said Charles, after the making of the said agreement, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, did begin to perform and execute, and did perform and execute a part of the said works so agreed to be done by him as aforesaid, according to the tenor and effect of the said agreement; and although the said plaintiffs afterwards, on divers days and times between the making and executing the said agreement and the said tenth day of December next ensuing the date thereof in the said agreement mentioned for doing and completing the said work therein mentioned, at London aforesaid, in the parish and ward aforesaid, requested and required the said Charles to execute, complete, and finish the said several works to be done and performed by the said Charles, according to his said agreement: Yet the said plaintiffs in fact say, that the said Charles did not on or before the said tenth day of December next ensuing the making of the said agreement and in the said agreement for that purpose mentioned, in a good workmanlike

Penalty.

Indorsed

Plaintiffs
performance

Breach

DEBT.—ON ARTICLES OF AGREEMENT.—PLEA

manlike and masterly manner, with materials the best of their kind in every respect whatsoever, execute or cause to be executed the said work shewn and described in the said plans, elevations, drawings, and written instructions in and by the said agreement mentioned and referred to, and on his part and behalf to be done, executed, and performed; *but on the contrary thereof, he the said Charles then and there failed and made default in the performance and completing of the said work, and wholly omitted and neglected to complete the same*, contrary to the form and effect of the said agreement, and in breach and violation thereof, to wit, at London, &c.; whereby not only the said other workmen in the said agreement mentioned were prevented from finishing their part of the said work by the said agreement stipulated to be performed according to the said agreement, but also the said plaintiffs, at and from the expiration of the said time in the said agreement mentioned and limited for the performance of the said work, for a long time, to wit, for one year then next following, were forced and obliged at a large expence, to wit, at the expence of one hundred pounds of lawful money of Great Britain, to find and provide for themselves another habitation, and other lodgings to live and reside in, and to pay a large sum of money, to wit, the sum of three hundred pounds of like lawful money to other artists and workmen to finish the said work so undertaken and left unfinished by the said defendant as aforesaid, and also suffered great loss as keepers and governesses of a boarding school for the education of young ladies for want of a proper habitation and accommodation for that purpose, by reason of the said omission and neglect of the said defendant in the premises, to wit, at London, &c.; whereby and by reason of which said neglect and omission of the said defendant in completing the said work so by him agreed to be completed as aforesaid, at the time aforesaid, he the said defendant hath forfeited and become liable to pay to the said plaintiffs the said sum of three hundred pounds the penalty in the said agreement contained for the due performance thereof; whereby an action hath accrued to the said plaintiffs to recover from the said defendant the said sum of three hundred pounds so forfeited as aforesaid, and above demanded: Yet, &c. [Common conclusion in debt.]

H. RUSSELL.

This cause was tried by a special jury at sittings after Hilary Term, 33. Geo. 3. (28th February 1793) before Lord Kenyon, and after a full hear-

ing of about three hours a verdict was found for plaintiff, and the amount of damages referred (by agreement.)

WHEELER
at suit of

LEE AND OTHERS.

And the said Charles, by Richard Bowsher his attorney, comes and defends the wrong and injury, when, &c. and says that the said agreement in the said declaration mentioned is not his deed, and of this he puts himself upon the country, &c.: And the said Charles for further plea in this behalf, by leave of the court,

&c.

&c. *actio non*; because he says that he *did on or before* the said tenth day of December next ensuing the making of the said agreement and in the said agreement for that purpose mentioned, in a good, workmanlike, and masterly manner, and with materials the best of their kind in every respect whatsoever, execute or cause to be executed the work shewn and described in the plans, elevations, drawings, and instructions in and by the said agreement mentioned and referred to on his part and behalf to be done, performed, and executed, according to the form and effect of the said agreement, and of his covenant in that respect made; and of this he puts himself upon the country, &c.: And the said Charles for further plea in this behalf, by like leave, &c. says, that after making the said agreement in the said declaration mentioned, and before the tenth day of December, in the year of Our Lord 1785, at London aforesaid, in the parish and ward aforesaid, the said T. B. architect in the said agreement mentioned, directed and required that various alterations should be made in the plans, elevations, drawings, and written instructions in the said agreement referred to, and in the said declaration above-mentioned, according to such directions as he the said T. B. should from time to time give; and afterwards, and before the said building and works were completed and finished, and before the said tenth day of December, in the year of Our Lord 1785, to wit, on the first day of June in that year, and on divers other days and times between that day and the said tenth day of December, the said T. B. *neglected and absented himself from the superintendence and direction of the said several works*, and omitted to give the instructions necessary for the same, nor did the said plaintiffs or any of them give the same; by reason whereof, and for want of such superintendence and direction, the said Charles was hindered and prevented from proceeding in and finishing the said work so by him to be done as aforesaid, within the time aforesaid, to wit, at London, &c.: And the said Charles in fact says, that the said supposed non-performance of the said agreement by him the said Charles in the said declaration mentioned in the time aforesaid, was wholly occasioned by the said *neglect and omission of the said T. B. and not through any neglect or default of him the said Charles*; and this he is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

3d F. architect directed alterations but neglected to superintend them, which occasioned defendant's non-performance.

E. WIGLEY.

The contract warrants Baldwin in making, and giving other instructions and alterations, and he did so to a trifling ex-

tent, but plaintiffs deny that he neglected the superintendence, or that defendant was delayed as here stated.

And the said plaintiffs, as to the said several pleas of the said defendant by him first and secondly above pleaded, and whereof he hath put himself upon the country, do the like: And as to the said plea of the said defendant by him lastly above pleaded in bar the said defendants say, that they ought not by reason of any thing therein

Replication taking issue on the pleas.

314. DEBT.—ON ARTICLES OF AGREEMENT—ATTORNIES.

therein alledged to be barred from having their aforesaid action maintained against him; because they say, that the said non-performance of the said agreement by the said defendant in the said declaration mentioned in the time aforesaid was occasioned by his own neglect and default, and not by the neglect and omission of the said T. B. as the said defendant hath in and by the said last plea alledged, in manner and form as the said plaintiffs have above thereof declared against him; and this they the said plaintiffs pray may be enquired of by the country, &c.

H. RUSSELL.

Trinity Term, 30. Geo. III.

speculation in
debt, for a pe-
nalty contained
in articles of co-
partnership be-
tween two at-
tornies, by
which it was
stipulated, that
on a dissolution
of the co-part-
nership defend-
ant should not
carry on business
within twenty-
five miles.

MIDDLESEX, to wit. Thomas Pering, gentleman, com-
plaints of George Bridgman, gentleman, one of the attornies of
the court of Our Lord the now king, before the king himself pre-
sent here in court in his own person, of a plea that he render to the said
Thomas one thousand pounds of lawful money of Great Britain,
which he owes to and unjustly detains from him, &c.; for that
whereas by certain articles of agreement made on the first day of
May, in the year of Our Lord 1783, at Westminster, in the said
county of Middlesex, between the said Thomas (by the name and
addition of Thomas Pering, of Dartmouth, in the county of Devon,
attorney at law and solicitor in equity) of the one part, and the said
George (by the name and addition of George Bridgman, of Oak-
hampton, in the same county, also an attorney at law and solicitor
in equity), of the other, one part of which said articles, filed
with the seal of the said George, the said Thomas now brings here
into court, the date whereof is the same day and year aforesaid,
reciting, &c. as by the said articles of agreement (reference being
thereto had) will more fully appear: And the said Thomas in
fact saith, that after the making of the said articles, to wit, on
the said first day of May, in the year of Our Lord 1783, at West-
minster aforesaid, the said co-partnership commenced and so con-
tinued until and after the seventh day of November, in the year of
Our Lord 1789, at Westminster aforesaid, and that afterwards,
to wit, on the same day and year last aforesaid, at Westminster
aforesaid, he the said Thomas gave notice in writing to the said
George of his the said Thomas's intention to dissolve partnership
at the end of six months from thence next following, and there-
upon the said partnership afterwards, to wit, on the seventh day of
May, in the year of Our Lord 1790, at Westminster aforesaid,
ceased and determined, according to the form and effect of the
said articles: And the said Thomas further says, that after the
said partnership ceased and determined, to wit, on the twentieth
day of May, in the year last aforesaid, and on divers other days
and times between that day and the day of exhibiting the bill of the
said Thomas, he the said George did settle, carry on, and trans-
act business as an attorney and solicitor in equity, with divers per-
sons

PLEA IN EXCUSE OF PERFORMANCE.—REPLICATION.

31

sons within the space of twenty-five miles of Dartmouth, to wit, at Dartmouth aforesaid, contrary to the form and effect of the said articles and of the said covenant of the said George so made in that behalf as aforesaid; by reason whereof an action hath accrued to the said Thomas to demand and have of the said George the said one thousand pounds above demanded: Yet the said George, although often requested, hath not paid the said one thousand pounds or any part thereof to the said Thomas, but hath hitherto wholly refused and still doth refuse so to do, to the damage of the said Thomas of twenty pounds, and therefore he brings suit, &c. Pledges, &c.

W. BALDWIN,

By the case of *Lowe v. Peers*, 4 Burr 2288, it appears that the whole of a penalty in a deed may be recovered by attending to the language in which it is created, the distinction being when it is inserted in *terrorem*, and where it arises out of an agreement to pay it absolutely on

the performance or non performance of a particular thing; in the former case a court of equity will mitigate it to the real damage sustained, and so will a court of law under Stat. 9 and 10. Wm 3. c. 10.; in the latter neither court can interfere. See 1. Espinasse N. P. 332.

Michaelmas Term, 31 Geo. III.

BRIDGMAN

at suit of

PERING.

} And the said George in his own proper person comes and defends the wrong and injury, when, &c. and says, that the said Thomas ought not to have or maintain his aforesaid action thereof against him; because he says that before the said George so settled, carried on, and transacted the said business for the said persons in the said declaration mentioned, within twenty-five miles of Dartmouth aforesaid, to wit, on the eighth day of May, in the year last-mentioned in the said declaration, he the said Thomas did give to the said George leave, licence, and consent to settle, carry on, and transact the said business as an attorney and solicitor in equity with the said persons in that behalf in the said declaration mentioned, within the space of twenty-five miles of Dartmouth in the said declaration mentioned; wherefore the said George did settle, carry on, and transact the said business for the said person as an attorney and solicitor as aforesaid; and thus he is ready to verify; wherefore he prays judgment if the said Thomas ought to have or maintain his aforesaid action thereof against him, &c.

Plea in bar, licence to the act the house charged in declaration.

V. GIBBS.

PERING

against

BRIDGMAN.

} —ff. And the said Thomas, as to the said plea of the said George by him above pleaded in bar, says, that he ought not by reason of any thing in that plea contained to be barred from having and maintaining his said action against the said George; because he says that he the said Thomas did not give to the said George leave, licence, and consent to settle, carry on, and transact the said business as an attorney and solicitor in equity with the said persons in that behalf in the said declaration mentioned, within twenty-five miles of Dartmouth in the said declaration mentioned, in manner and form as the said

Replication, denying the defence.

George

DEBT.—ON ARTICLES OF AGREEMENT.

George hath above in his said plea in that behalf alledged; and this he the said Thomas prays may be enquired of by the country, &c.

The plea of licence admits the facts charged in the declaration and excuses them, so that defendant has only to prove his licence, which if he does, there will be a verdict for him; but if he should fail in that, the plaintiff for the purpose

of establishing his damages according to the Statute of 8 & 9. Will 3. c. 10. must prove the agreement, and the breach as stated in the declaration

T. BARROW.

Declaration in
the King's Court
for a school-
master, on a
special agree-
ment to teach
defendant's
daughter, for a
certain sum per
quarter, aver-
ring that he
taught her a
part of the quar-
ter, and was
ready and ten-
dered to conti-
nue his instruc-
tions, but de-
fendant dispensed
with it, and
took his daughter
away; other
counts for work
and labour, and
money paid, &c.
pleaded.

KINGSTON UPON THAMES, Surry, to wit. On the day of , in the thirtieth year of the reign of king George the Third, John Scott, by A. B. his attorney, complains of Joseph Allen in a plea that he render to him the said John Scott pounds of lawful money of Great Britain, which he owes to and unjustly detains from him; for that whereas the said John heretofore, to wit, on the twenty-sixth day of December, in the year of Our Lord 1787, at Kingston, in the county of Surry, and within the jurisdiction of this court, was indebted to the said John in a large sum of money, to be paid to him upon request, to wit, the sum of ten shillings and sixpence of lawful money of Great Britain, for the work and labour, care and diligence of the said John as a schoolmaster, by him the said John before that time there done, performed, and bestowed in and about the teaching and instructing of one Martha Allen, daughter of the said John, in reading, writing, and good manners, and other necessary accomplishments and qualifications for a long time, to wit, for the space of three months then elapsed, at the special instance and request of the said Joseph, by reason whereof and of the said sum of money being still due and unpaid to the said John, an action hath accrued to the said John to demand and have of and from the said Joseph the said sum of money, parcel of the said sum of pounds above demanded: And whereas heretofore, to wit, on the twenty-sixth day of June, in the year of Our Lord 1787, at Kingston aforesaid, in the county and jurisdiction aforesaid, it was agreed by and between the said John and the said Joseph, that the said John should teach and instruct one Martha Allen, the daughter of the said Joseph, in reading, writing, and good manners, and other accomplishments and qualifications, for a certain time, to wit, for the space of one quarter of a year then next following, and that he the said Joseph in consideration thereof should pay to the said John for the same a large sum of money, to wit, the sum of ten shillings and sixpence of lawful money of Great Britain, whenever afterwards he the said Joseph should be thereto requested: And the said John in fact says, that the said agreement being so made as aforesaid, he the said John in pursuance thereof afterwards, to wit, on the day and year aforesaid, at Kingston aforesaid, in the county and jurisdiction aforesaid, did proceed to teach and instruct the said Martha Allen according to the terms of the said agree-
ment,

SCHOOLMASTER—BAKER.

ment, and did then and there continue to teach and instruct the said Martha Allen for a long time afterwards, part of the said quarter of a year next ensuing the making of the said agreement, to wit, until the tenth day of July then next following, when she the said Martha Allen was then and there taken away from him the said John by the said Joseph, and the further duty and attendance of the said John in this behalf was then and there dispensed with by the said Joseph, although he the said John was then and there willing, and then and there tendered and offered to continue to teach and instruct the said Martha Allen for the residue of the said quarter according to the terms of the said agreement; and afterwards, and at the expiration of the said quarter, to wit, on the twenty-seventh day of September, in the said year of Our Lord 1787, to wit, at Kingston aforesaid, in the county and jurisdiction aforesaid, demanded the said sum of ten shillings and sixpence of the said Joseph for the same, by reason of which said several premises the said Joseph then and there became indebted to the said John in the said last-mentioned sum of money; whereby an action hath accrued to the said John to demand and have of and from the said Joseph the said last-mentioned sum of money, other parcel of the said sum of pounds above demanded: Counts for money paid, and money due on an account stated, and common conclusion in debt.

T. BARROW.

Easter Term, 28. Geo. III.

MIDDLESEX, to wit. Spencer White complains of Peter Macaulsen being, &c. of a plea that he render to the said Spencer one hundred and five pounds of lawful, &c. which the said Peter owes to and unjustly detains from him; for that whereas by certain articles of agreement made the tenth day of November 1787, to wit, at the parish of St. George, in the said county, between the said Peter, by the name of P. M. of Virginia-street, in the parish of St. George, in the county of Middlesex, baker, of the one part, and the said S. by the name and addition of S. W. of Ramsgate, in the county of Kent, baker, of the other part (one part of which said articles of agreement, sealed with the seal of the said P. the said S. now brings here into court, the date whereof is the same day and year aforesaid) it was, amongst other things, agreed between the said S. and the said P. as follows, *i. e.* first, the said P. for and in consideration of the sum of two hundred and ten pounds of lawful, &c. to be by him paid by the said S. on or before the first day of December then next ensuing, *i. e.* the first day of December in the year aforesaid, did thereby agree to assign, transfer, and set over unto the said S. all that messuage or tenement, No. 16, and premises, with the appurtenances, situate in Virginia-street, then in the tenure or occupation of the said Peter, and which he then held by virtue of a lease to him thereof granted for a certain term then unexpired, to hold unto the said S. for the remainder of the said term which should be to come and unex-

Debt for a
penalty contain
in articles
agreement,
whereby
defendant, who
was a baker,
agreed to the
assignment of
his premises
plaintiff,
to intermeddle
with his busi-
ness and cus-
tomers in the
parish.

pired from half-quarter of November then instant, subject to the payment of the rent, taxes, and assessments, and performances of the covenants, conditions, and agreements in the said lease contained, and on the tenants, lessees, or assigns part and behalf to be paid, kept, done, and performed; and the said S. for the considerations of resaid, did thereby covenant and agree with the said Peter to accept and take the said assignment and premises upon the terms and conditions, and to pay to the said Peter the sum of two hundred and ten pounds of lawful, &c. on or before the said first day of December then next ensuing, as and for the good-will or gratuity to be made by him for the time; and further it was thereby mutually agreed, that if he the said Peter should or did carry on trade in the parish of St. George aforesaid, as a baker, or intermeddle as a baker with the custom or customers to the said premises from and after the said first day of December, then he the said P. should stand and be liable, and be subject to the penalty of one hundred and five pounds, as by the said agreement, reference being thereto had, will amongst other things more fully appear: And although the said S. after the making the said articles of agreement, to wit, on the said first day of December, in the year aforesaid, at the parish aforesaid, did accept and take the said assignment and premises upon the terms and conditions, and did then and there pay to the said P. the full sum of two hundred and ten pounds of lawful, &c. as and for such good-will and gratuity as aforesaid, and although the said S. did on the day and year last aforesaid, enter and take possession of the said premises, and hath continually from thence hitherto been possessed thereof, and carried on the trade and business of a baker in the same, and although the said S. hath always from the time of the making the said articles hitherto well and truly performed and fulfilled the same in all things therein contained on his part and behalf to be performed and fulfilled, according to the tenor and effect thereof: Yet the said S. in fact saith, that the said P. after the said first day of December, in the year aforesaid, to wit, on the second day of December in that year, and on divers other days between that day and the day of exhibiting this bill, did carry on the trade of a baker in the parish of St. George aforesaid, contrary to the tenor and effect of the said articles of agreement, and in breach and violation thereof: And the said S. according to the form of the statute in such case made and provided, in fact further saith, that the said Peter, after the said first day of December, in the year aforesaid, to wit, on the said second day of December in that year, and on divers other days between that day and the day of exhibiting this bill, at the parish aforesaid, did intermeddle as a baker with the custom and customers to the said premises, by then and there selling and delivering certain large quantities of bread to one C. H. one W. D. &c. &c. one Mrs. Curtis, one Mrs. Clarke, and one Mrs. Mudge, whose respective christian names are wholly unknown to the said S. and divers, to wit, twenty other persons respectively, who before and at the time of the making of the said articles had

been

A Breach.

A Breach.

ARTICLES OF AGREEMENT.—SALE OF PREMISES.

been and were customers to the said premises, and who from the time of the making thereof until the respective times of the selling and delivering such bread by the said P. were accustomed to buy and take their bread from the said S. at the said premises, contrary to the tenor and effect of the said articles of agreement, and in further breach and violation thereof: And the said S. according to the form of the statute in such case made and provided, in fact further says, that the said P. after the said first day of December, in the year aforesaid, to wit, on the said second day of December in that year, and on divers other days between that day and the day of exhibiting this bill at the parish aforesaid, did intermeddle as a baker with the customers to the said premises, by then and there soliciting or making application to one C. J. &c. &c. and one Mrs. Ward, whose christian name is wholly unknown to the said S. and divers, to wit, twenty other persons respectively, who before and at the time of the making of the said articles had been and were customers to the said premises, and who after the making thereof were accustomed to take their bread from the said S. to buy and take their bread from him the said P. contrary to the tenor and effect of the said articles of agreement; and in further violation thereof, by means of which said several premises, and according to the tenor and effect of the said articles, the said P. became and stands subject and liable to the penalty of one hundred and five pounds in the said articles mentioned, and thereby an action hath accrued to the said S. to demand and have of and from the said P. the said sum of one hundred and five pounds above demanded: Yet the said P. although often requested &c. hath not paid the said sum of one hundred and five pounds, or any part thereof to the said S. but to pay the same, or any part thereof to the said S. hath hitherto refused, and still refuses so to do, to the damage of the said S. of twenty pounds; and therefore he brings his suit, &c.; pledges, &c.

S. MARRYATT.

Easter Term, 25. George III.

MIDDLESEX, to wit. William Smith complains of John Britt, being, &c. of a plea that he render to the said William the sum of forty pounds of lawful money of Great Britain, which he owes to and unjustly detains from him; for that whereas by a certain agreement made on the sixteenth day of June, A. D. 1784, to wit, at Westminster, in the county of Middlesex aforesaid, between the said John by the name and addition of John Britt, of Prince's-street, in the parish of St. Giles, Cripplegate, in the city of London, gentleman, of the one part, and the said William by the name and addition of William Smith, of King-street, in the parish of St. Margaret, Westminster, gentleman, of the other part, (one part of which said agreement, sealed with the seal of the said John, he the said William now brings here into court, the date whereof is the same day and year aforesaid) reciting, that whereas the said John was then legally seized in fee of all those several freehold

Declaration
debt for the
penalty of breach
of agreement
for the sale
freehold
premises, in
producing
complete title

hold messuages or tenements, with their appurtenances, situate, standing, and being in a court commonly called or known by the name of Three-crown-court, in the parish of St. Saviour, in the Borough of Southwark, in the county of Surry, then or then late in the tenure or occupation of William Golding, esquire, Elizabeth Lamb, Robert Maynard, and Evan Evans, their under tenants or assigns, then producing the clear yearly rent of thirteen pounds or thereabouts; and also reciting, that whereas the said William had agreed to become the purchaser of the said freehold messuages or tenements from the said John, and to receive the rents or profits of the same from the twenty-fourth day of June then instant, that is to say, the twenty-fourth day of June, in the year aforesaid, at and for the price or sum of two hundred and fifty pounds of lawful money of Great Britain; it was therefore by the said agreement covenanted and agreed by and between the said parties thereto as follows, that is to say, that if the said John Britt should not on or before the twenty-fourth day of June then instant, that is to say, the twenty-fourth day of June in the year aforesaid, produce a clear and perfect title in the law of in and to the said freehold messuages, tenements, and premises, and execute a proper conveyance thereof to the said William, to hold to him the said William, his heirs, and assigns for ever, upon his the said William Smith's paying to the said John Britt the full sum of two hundred and fifty pounds of lawful money of Great Britain, as and for the purchase money thereof, he the said John should and would in such case forthwith forfeit and pay unto the said William Smith the sum of twenty pounds of lawful money of Great Britain, and should and would also forfeit and pay the costs of that agreement, and all incidental expences relating thereto, as by the said agreement, relation being thereunto had, will amongst other things more fully and at large appear: And although the said William hath always from the time of making the said agreement hitherto well and truly performed and fulfilled the same in all things therein contained on his part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning thereof, to wit, at Westminster aforesaid, in the county of Middlesex aforesaid, yet protesting that the said John hath not performed or fulfilled any thing in the said agreement contained on his part and behalf to be performed and fulfilled, he the said William in fact saith, that the said John, although often requested, &c. did not nor would upon or before the said twenty-fourth day of June, in the year aforesaid, produce, nor hath he at any time hitherto produced a clear and perfect or other title in the law of, in, or to the said freehold messuages or tenements and premises, or any part thereof, or executed a proper conveyance thereof, or of any part thereof to him the said William, to hold the same to him the said William, his heirs and assigns for ever, according to the tenor and effect of the said agreement in that behalf, but hath hitherto wholly refused and neglected so to do, and therein failed and made default, contrary to the tenor and effect, true intent and meaning of

of the said agreement, and of the said covenant of the said John by him in that behalf made as aforesaid, whereby and according to the tenor and effect of the said agreement the said John forfeited and became liable to pay to the said William the sum of twenty pounds of lawful money of Great Britain, together with the costs of the said agreement, and all incidental expences relating thereto: And the said William in fact further saith, that the costs of the said agreement, and all incidental expences relating thereto, amounted to a huge sum of money, to wit, the sum of twenty pounds of lawful money of Great Britain, making together, with the said sum of twenty pounds, the said sum of forty pounds of like lawful money, and thereby an action hath accrued to the said William to demand and have of and from the said John the said sum of forty pounds to be forfeited as aforesaid, being the sum above demanded; yet the said John, although often requested, &c. hath not as yet paid the said sum of forty pounds above demanded, or any part thereof to the said William; but to pay the same or any part thereof to the said William he the said John hath hitherto wholly refused, and still refuses so to do, to the damage of the said William ten pounds, and therefore he brings suit, &c.; pledges, &c.

And the said John, by John Keys his attorney, comes and defends the wrong and injury, when, &c. and says that the said William ought not to have his aforesaid action thereof maintained against him, because he says, that the said John before the said twenty-fourth day of June in the last agreement mentioned, to wit, on the eighteenth day of the said June, at Westminster aforesaid, was ready and willing, and offered to the said William to produce a clear and perfect title in the law of, in, and to the freehold messuages or tenements and premises, and to execute a proper conveyance thereof to the said William, to hold to him the said William, his heirs, and assigns for ever, upon his and the said William's coming to the said John the full sum of two hundred and fifty pounds as and for the purchase money thereof, whereof the said William then and there had none; but that the said William then and there requested and charged the said John not ever to produce the title, or to execute the said conveyance to the said William, and the said William then and there forbade the said John then or ever so to do, and the said William then and there declared to the said John that he would not ever, nor did he ever pay to the said John the said sum of two hundred and fifty pounds as and for the purchase money, and the said William then and there totally declined and disavowed the carrying into the said agreement in the said declaration mentioned into execution, for which reason, and no other, the said John came upon or before the said twenty-fourth day of June, in the year aforesaid, produce, nor hath he at any time since hitherto produced a clear and perfect or other title in the law of, in, or to the said freehold messuages or tenements and premises, or any part thereof to him the said William, to hold the same to the said William, his heirs, and assigns for ever, accord-

Plea in bar that defendants were ready and willing and offered a complete title, but plaintiff desired them not to produce it, declined carrying the agreement into execution, and declared he would not pay the purchase money.

REPLICATION AND REJOINDER.

ing to the tenor and effect of the said agreement in that behalf; and this he is ready to verify; wherefore he prays judgment if the said William ought to have or maintain his aforesaid action thereof against him, &c.

Replication,
 protesting that
 defendant was
 not ready, or
 offered a com-
 plete title; for
 replication, that
 defendants were
 willing to com-
 plete the pur-
 chase according
 to agreement.

And the said William saith, that he by reason of any thing by the said John in his said plea above alledged, ought not to be barred from having and maintaining his aforesaid action thereof maintained against him, because protesting that the said plea, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the said William from having his aforesaid action thereof maintained against him the said John; protesting also that the said John was not ready or willing, or offered to the said William to produce a clear and perfect title in the law of us, and to the said freehold messuages or tenements and premises, or to execute a proper conveyance thereof to the said William, to hold to him the aforesaid William, his heirs and assigns for ever, upon his the said William's paying to the said John the full sum of two hundred and fifty pounds, as and for the purchase money thereof, in manner and form as the said John hath above in his said plea in that behalf alledged; for replication in this behalf the said William saith, that he the said William after the making of the said agreement, and from thence and until and upon the said twenty-fourth day of June therein mentioned, was ready and willing to complete the purchase of the said freehold messuages or tenements and premises therein also mentioned, according to the tenor and effect of the said agreement in that behalf, to wit, at Westminister, in the county of Middlesex aforesaid; without this that he the said William requested or desired the said John not ever to produce the same title, or to execute the same conveyance to the said William, or forbid the said John so to do, or decline to the said John that he would not ever pay to the said John the said sum of two hundred and fifty pounds as and for the said purchase money, or declined or disavowed the carrying the said agreement into execution in manner and form as the said John hath above in his said plea in that behalf alledged; and this he the said William is ready to verify; wherefore he prays judgment and his said damages, together with his damages by him sustained on occasion of the said detaining thereof, to be adjudged to him, &c.

GEORGE WOOD.

Replication,
 traversing that
 plaintiff never
 desired defend-
 ant not to pro-
 duce a complete
 title, or ever re-
 fused to pay the
 purchase mo-
 ney.

Rejoinder, tak-
 ing issue upon
 the traverse.

And the said John, as to the said plea of the said William above in reply pleaded to the said plea of him the said John above pleaded in bar, as before says, that the said William requested and desired the said John not ever to produce the same title or to execute the said conveyance to the said William, and forbid the said John so to do, and did decline to the said John that he would not ever pay to the said John the said sum of two hundred and fifty pounds as and for the said purchase money, and declined and disavowed the carrying the said agreement into execution in manner and form as the said

John

DEBT.—ON ARTICLES OF AGREEMENT.

John hath above in his said plea in that behalf alledged; and of this he the said John puts himself upon the country, and the said William doth the like; therefore, &c.

N. B. This cause was tried at the sittings under Trinity Term 1785, when upon the defendant proving the facts in issue, the plaintiff submitted to a nonsuit.

Trinity Term, 28. Geo. III.

MIDDLESEX, to wit. William Shore, late of, &c. was attached to answer the most noble Anthony duke of St. Albans, in a plea that the said William render to the said duke the sum of five hundred pounds which he owes to and unjustly detains from him, &c. and whereupon the said duke, by T. W. his attorney, complains; for that whereas by certain articles of agreement made on, &c. at, &c. between the said duke by the name, &c. of the one part, and the said W. S. by the name, &c. of the other part, which said articles of agreement, sealed, &c. the said duke agreed, amongst other things, to sell, and the said W. S. agreed to purchase the farm and premises in the occupation of J. W. B. situate in the several parishes of, &c. together also with an acre and half of boggy land, also occupied by the said W. B. belonging to the said duke, at the sum of two thousand five hundred and ninety-four pounds, subject to the lease then granted to the said J. W. B. the same to be paid at Lady-day then next, and in the following manner, viz. the said duke to accept a conveyance and surrender of the following freehold and copyhold premises of the said W. S. in Hanworth aforesaid, with the fixtures thereto belonging, at the price or sum of one thousand eight hundred and twenty pounds, the same to be deducted from the said sum of two thousand five hundred and ninety-four pounds, the estate called the Malthouse, in the possession of H. T. on lease, the estate called Wingfield farm, in the occupation of W. S. R. C. M. W. and T. T. the messuage and premises called the Swan alehouse, in lease to W. P. the messuage and premises occupied by J. B. called Frog's-hall, and a messuage and premises called, &c. the said W. S. to convey these premises free from incumbrances, except the foregoing leases, at the expence of the duke, except any fine or fines which, if necessary, were to be paid for by the said W. S. the duke to make a good title to the said W. S. at his expence, unless a fine or recovery were necessary, and which was to be completed at the duke's expence, the remainder of the purchase money to be paid by W. S. to the duke on the execution of the conveyance, which it was agreed should be made on or before Lady-day then next following; all timber trees, elms, and willow trees which then were upon any of the above estates to be fairly valued by two appraisers, and the prices or value thereof to be paid by the respective purchasers of the estates at the time before mentioned; it was further agreed, that the respective rents of the before mentioned estates should be received by the then owners

Declaration of debt for the penalty for non-performance of articles of agreement, in paying the purchase money of premises bought by defendant of plaintiff, which was to be paid for part in money, and part by an estate, which defendant was to convey to plaintiff.

DEED.—ON ARTICLES OF AGREEMENT.

until the twenty-fourth day of March then next following; it was also agreed that in case the duke should not be enabled to make a good title to the said estate before the said twenty-fourth day of March then next ensuing, that agreement and every thing therein contained should cease to all intents and purposes, the said parties did thereby bind themselves each to the other in the penal sum of five hundred pounds to be paid by the party making default to the party observing the above agreement, as by the said articles of agreement, reference being thereto had, will appear: and although the said duke always from the time of the making of the said articles of agreement hath hitherto well and truly done, performed, and fulfilled, and kept every thing in the said articles on his part and behalf to be done, performed, fulfilled, and kept; yet protesting that the said William hath not done, performed, fulfilled or kept any thing in the said articles of agreement contained on his part and behalf to be done, performed, fulfilled, and kept: In fact the said duke says, that he the said duke always from the time of the making of the said articles of agreement until and upon the said twenty-fourth day of March next ensuing the date thereof, and always since hath been and is capable, ready, and willing to make a good title to the said William of the said farm and premises and boggy land so agreed to be purchased by the said W. S. as aforesaid, and to execute and cause to be executed necessary and proper conveyances and assurances of the said farm and premises and boggy land to the said W. S. and if the said W. S. would have drawn and prepared the same for execution, according to the form and effect of the said articles of agreement, to wit, at, &c.; and the said duke avers, that he the said duke, before the said twenty-fourth day of March, to wit, on, &c. in, &c. at, &c. gave notice to the said W. S. that he the said duke was ready and willing at any time to make a good title to the said W. S. of the said farm and premises and land so agreed to be purchased by the said W. S. as aforesaid, and to execute and cause to be executed proper deeds, conveyances, and assurances for that purpose, if the said William would prepare the same, he the said duke then and there being, and still being enabled to make, and capable of making a good title to the said W. S. of the said farm, premises, and land, according to the form and effect of the said articles; yet the said William did not, nor would on or before the said twenty-fourth day of March next ensuing the date of the said articles of agreement, nor hath he at any time hitherto drawn or prepared, or caused to be drawn or prepared to be executed any deed, conveyance, or assurance, deeds, conveyances, and assurances whatsoever of the said farm and premises and land mentioned in the said articles of agreement, and so agreed to be purchased by the said W. S. as aforesaid to him the said W. S. nor did nor would pay the said purchase-money or any part thereof, nor did nor would accept the said title according to the said articles of agreement, but on the contrary thereof the said W. S. hath wholly neglected and refused, and still doth neglect and refuse to draw any deed, conveyance,

PLEA—REPLICATION—AND DEMURRER TO PLEA.

veyance, or assurance, deeds, conveyances, and assurances whatsoever of the said farm, premises, and land, unto the said W. S. or to pay the said purchase-money or any part thereof, or in any wise to carry the said articles into execution, contrary to the form and effect of the said articles of agreement; whereby and by force of the said articles of agreement an action hath accrued, &c.; yet the said William, although often requested, hath not yet paid the said five hundred pounds, or any part thereof to the said duke, but to pay the same to the said duke hath hitherto wholly refused, and still refuses, wherefore the said duke says he is injured, and hath sustained damage to the value of five hundred pounds; and therefore he brings his suit, &c.

And the said William, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said duke ought not to have or maintain his aforesaid action thereof against him, because he says, that the said duke was not capable, ready, and willing to make, nor could he the said duke make a good title to the said William of the said farm and premises, and boggy land so agreed to be purchased by the said William as aforesaid, according to the tenor and effect of the said articles of agreement, in manner and form as the said duke hath above in his said declaration in that behalf alledged; and of this he the said William puts him self upon the country, &c. : And for further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, he the said William says, that the said duke, *actio non*; because he says, that after the making of the said agreement, and before Lady-day then next following, to wit, on, &c. the said duke cut down, felled, and prostrated, and caused to be cut down, felled, and prostrated divers, to wit, five hundred of the said timber trees, five hundred of the said elms, and five hundred of the said willow trees in the said declaration and agreement respectively mentioned, and by the said agreement agreed to be valued and paid for as in the said agreement is mentioned, whereby he the said duke disabled himself from performing, and it became and was impossible for him the said duke to perform and fulfil the said articles of agreement on his part and behalf, according to the tenor and effect of the said articles, for which reason he the said William declared and refused to carry the said articles into execution on his part, as he lawfully might do for the cause aforesaid; and this, &c. wherefore, &c. if, &c.

GEORGE BOND.

And the said duke, as to the plea of the said William by him first above pleaded in bar, whereof the said William hath put himself upon the country, doth so likewise, &c. : and the said duke, as to the plea of the said William by him secondly above pleaded in bar, says, that the said plea, and the matters therein contained are not sufficient in law to bar the said duke from having his said action maintained against the said William, to which plea in

Plea to the declaration the plaintiff could not make a good title.

2d Plea, the plaintiff cut down a good quantity of timber, whereby he disabled himself from performing, &c.

manner and form as the same is above made and set forth, he the said duke is not under any necessity, or in anywise bound by the laws of the realm to answer; and this, &c.; wherefore for want of a sufficient plea in this behalf he the said duke prays judgment and his debt aforesaid, together with his damages on occasion of detaining of that debt to be adjudged to him, &c.

S. LAWRENCE.

Joinder in demurrer.

And the said William saith, that the said plea of the said William by him secondly above pleaded in bar, and the matters therein contained, in manner and form as the same are above declared and set forth, are sufficient in law to bar the said duke from having and maintaining his aforesaid action thereof against him the said William; which said plea, and the matter therein contained, the said William is ready to verify and prove as the court here shall award; and because the said duke hath not answered or denied the said plea, he the said William as before prays judgment, and that the said duke may be barred from having and maintaining his aforesaid action against him, &c.

GEORGE BOND.

I am not aware of any *substantial* defect in the plea demurred to, although it would certainly have been rather more formal if the trees cut down had been expressly stated to have been growing on the premises alleged to be conveyed by the plaintiff. I take the want of this averment, however, as the plaintiff's reason to state, that by the cutting down of the trees, the plaintiff established himself from putting the objection on his part to be merely an objection in point of form, which cannot be taken advantage of under a general demurrer, like

the present; I take it, only, if of the same matter, therefore, to be the occasion of the general question of the merit of the duke to cut down such trees, and that it is not his own want of the averment alluded to, but a matter that can be read or not, I am of opinion the declaration is valid, for, not finishing the duke's title to convey, but finishing the case on a question. *Robertson, D. & 258.* I think, not out of these objections, upon the whole, that I am, I should think, the defendant to argue the declaration

V. L. 22.

Declaration, defendant and his wife having agreed to live separate from each other, he was to pay her a certain sum of money yearly for her support. This action is brought by a third person, who was chosen by the parties to recover the money agreed to be paid to his wife.

LONDON, ff. David Rhuddle complains of Robert Bergrave being, &c. in a plea that the said Robert tender to the said D. the sum of ten pounds of lawful, &c. which the said R. owes to the said D. and unjustly detains from him; for that whereas by a certain indenture made at, &c. on, &c. between the said R. B. (by the name, &c.) of the first part, Rebecca, the wife of the said R. B. of the second part, and the said D. (by the name, &c.) of the third part (one part, &c.) recited, that whereas several unhappy differences had arisen between the said R. B. and Rebecca his wife, and that they had for some time lived, and did then and there live separate from each other; and the said R. B. although unwilling to live and cohabit with his said wife, was nevertheless desirous to make such provision for her support and maintenance during their separation as thereafter mentioned, and which the said Rebecca was willing to accept; therefore the said R. B. in order to make a provision for the support and maintenance

ARTICLES OF AGREEMENT—ANNUITY.

34

nance of the said R. his wife, during the time they should continue to live separate and apart from each other, and in consideration thereof did thereby for himself, his executors, administrators, and assigns, covenant, promise, and agree to and with the said D. R. (a person for that purpose mutually nominated by the said R. B. and Rebecca his wife) his executors, and administrators in manner following, that is to say, that he the said R. B. should and would from thenceforth truly pay, or cause to be paid unto the said Rebecca his wife, or unto the said D. R. his executors, or administrators, to and for her use, the clear yearly sum of forty pounds of lawful, &c. by equal quarterly payments at the four most usual days of payment in the year, that is to say, &c. the first quarterly payment thereof to commence and be made on, &c. next ensuing the date thereof, without any deduction or abatement whatsoever, and the said quarterly payments to continue and be made during the joint lives of the said R. B. and Rebecca his wife, or until such time as they should again cohabit and live together with the mutual consent of each other, as by the said indenture now brought here into court (reference being thereto had) will appear; and although the said D. from the time of the making of the aforesaid indenture, hath hitherto well and faithfully performed and fulfilled every thing in the said indenture contained on his part and behalf to be performed and fulfilled; yet protesting that the said Robert hath not done, performed, or fulfilled any thing in the said indenture contained on his part and behalf to be done, performed, and fulfilled: In fact the said D. says, that the said Rebecca, the wife of the said R. is still living, to wit, at, &c. and that the said R. and Rebecca have not, since the making of the said indenture, hitherto cohabited and lived together, and that at the feast of the Annunciation of the Blessed Virgin Mary 1772, ten pounds of the said annuity or yearly rent of forty pounds for one quarter of the year, ending at that feast in the year last aforesaid became due and payable from the said Robert to the said Rebecca, or to the said D. to and for her use, according to the form and effect of the said indenture; yet the said R. hath not yet paid the said ten pounds, or any part thereof, either to the said Rebecca or to the said D. to and for her use, whereby an action hath accrued to the said D. to demand and have of and from the said Robert the said ten pounds above demanded; yet, &c. (Com non conclusion in debt.)

Michaelmas Term, 23. Geo. III.

LONDON, to wit. Robert Nelham and Elizabeth his wife, who is executrix of the last will and testament of Ann Haydon deceased, complain of William Haydon being, &c. in a plea that he render to them one hundred and ten pounds of lawful, &c. which he unjustly detains; for that whereas said defendant heretofore, and in the life of said Ann Haydon, to wit, on the ninth day of June A. D. 1766, at London, &c. by a certain agreement or indenture then and there ~~had~~ made, concluded, and agreed upon

Declaration. I
debt at the suit
of an executrix
for the arrears
of an annuity

DEBT.—AGAINST EXECUTOR AND

between him said defendant of the one part, and said Ann Haydon of the other part (one part of which said agreement or indenture, sealed with the seal of the said defendant, and bearing date the day and year aforesaid, they said plaintiffs now bring into court here) for the considerations therein mentioned, did give and grant unto said Ann Haydon one annuity of eight pounds, to be paid to her for and during the term of her natural life, in case said defendant should so long live, by quarterly payments, that is to say, Michaelmas-day, Christmas, Lady-day, and Midsummer-day, and the first quarterly payment of forty shillings to commence and be made at or upon Michaelmas-day then next ensuing, but in case said defendant should depart this life in the time of said Ann Haydon, then the annuity was to cease and be at an end, and should be no longer paid, as by said agreement or indenture (reference being thereto had) will more fully and at large appear: And said plaintiffs in fact further say, that said agreement or indenture being so made as aforesaid, after the making thereof, and in the lifetime of said Ann Haydon, to wit, on the twenty-fourth of June 1780, at London, &c. aforesaid, one hundred and ten pounds for three years and three quarters of another year (*a*) of said annuity or yearly sum of eight pounds in the aforesaid agreement or indenture mentioned, ending and ended on that day in the year last aforesaid, became due and payable from said defendants to said Ann Haydon, and still is in arrear and unpaid either to said Ann Haydon in her time or to said plaintiffs, or to either of them since her death, to wit, at, &c. aforesaid, whereby an action hath accrued to said plaintiffs, as said Elizabeth as such executrix as aforesaid, to demand and have of and from said defendant said sum of one hundred and ten pounds above demanded; yet said defendant, although often requested, hath not yet rendered said sum of one hundred and ten pounds, or any part thereof to said plaintiffs, or to either of them, but, &c. to render said sum of one hundred and ten pounds, or any part thereof to said plaintiffs, or either of them, hath hitherto wholly refused, and still doth refuse to the said plaintiffs, as said Elizabeth is such executrix as aforesaid their damage of twenty pounds; and therefore they bring their suit, &c.; and they also bring into court here the letters testamentary of said Ann Haydon, whereby it fully appears to said court here that said Elizabeth is executrix of the last will and testament of said Ann Haydon, and hath the administration thereof, &c.

V. LAWES.

(a) There is some miscalculation here.

Michaelmas Term, 25. Geo. III.

NORTHAMPTONSHIRE, to wit. James Swinfew and Elizabeth his wife were summoned to answer John Matcham Coleman, in a plea that they render to him. twenty-four pounds of, &c. an annuity which was left him by one E. M. who had devised lands to defendant's father and made her sole executrix of his will before her marriage with defendant, and out of the annuity was to be paid, &c.

which

DEVISEE, FOR ARREARS OF AN ANNUITY.*

which they owe to and unjustly detain from him; and thereupon the said plaintiff, by A. B. his attorney, complains, that whereas one E. M. now deceased, in her lifetime, to wit, on, &c. and at the time of her decease hereinafter mentioned, was seised in her demesne as of fee of and in divers messuages, lands, and tenements, with the appurtenances hereafter mentioned to have been devised by her to the said Elizabeth Swinfew, by her then name and description of Elizabeth Coleman, the then wife of Thomas Coleman since deceased, to wit, at, &c. in, &c. and being so seised, she the said E. M. in her lifetime, to wit, on, &c. at, &c. duly made her last will and testament in writing, bearing date the day and year aforesaid, and thereby (amongst other things) gave, devised, and bequeathed unto the said plaintiff for and during the time of the natural life of the said Elizabeth, the now wife of the said James, then E. C. the wife of T. C. since deceased, a certain annuity of twenty pounds of lawful money of Great Britain, to be issuing and payable out of the said messuages, lands, and tenements, with the appurtenances, and to be paid to the said plaintiff by the said Elizabeth, for and during the term of her natural life, by two half-yearly payments, that is to say, on, &c. the first payment thereof to begin and be made upon such of the said feasts as should first happen after the decease of her the said E. M.; and also that the said E. M. did, in and by her said last will and testament, give, devise, and bequeath the said messuages, lands, and tenements, with the appurtenances of her the said E. M. by the name and description of all her real estate, lying and being at, &c. in, &c. unto the said Elizabeth, the now wife of the said James, by her then name of Elizabeth, wife of Thomas Coleman, and her assigns, to hold the same for the term of her natural life, she and they paying thereout unto the said plaintiff the yearly sum of twenty pounds of lawful money by two half-yearly payments, that is to say, on, &c. the first payment thereof to begin and be made upon such of the said feasts as should first and next happen after her the said E. M.'s decease; and the said E. M. then and there nominated and appointed the said Elizabeth, the now wife of the said James, then wife of the said T. C. since deceased, sole executrix of the said will, as by the said will (reference being thereunto had) will amongst other things more fully appear: And the said plaintiff in fact says, that afterwards, to wit, on, &c. the said E. M. died so seised as aforesaid, without altering or revoking her said will; after whose death, and after the death of the said T. C. deceased, to wit, on, &c. the said Elizabeth, the now wife of the said James, then widow of the said T. C. her late husband then lately deceased, the said executrix named in the said last will and testament of the said E. M. deceased, duly proved the said will, and took upon himself the burthen of the execution thereof, and assented to the aforesaid devises and bequests respectively, to wit, at, &c.; by virtue whereof the said Elizabeth, the now wife of the said James, then widow of the said T. C. afterwards, to wit, on, &c. at, &c. became and was seised in her demesne

mesne as of freehold, that is to say, for and during the term of her natural life of and in the said messuages, lands, and tenements, with the appurtenances so devised and taken as aforesaid, and out of which the said annuity so devised and bequeathed to the said plaintiff was to issue and be paid as aforesaid; and the said plaintiff also then and there became entitled to the said annuity so devised to him as aforesaid: And the said J. M. C. in fact further says, that she the said Elizabeth, the now wife of the said James, then widow of the said T. C. deceased, being so seised as aforesaid; and the said plaintiff being so entitled to the said annuity as aforesaid, afterwards, to wit, on, &c. at, &c. took to husband and intermarried with him the said James, and thereupon the said James, and Elizabeth his wife, late E. C. became and were, and still are seised in right of the said Elizabeth in their demesne as of freehold, that is to say, for and during the term of the natural life of her the said Elizabeth, of and in the said messuages, lands, and tenements, with the appurtenances so devised to her as aforesaid, and out of which the said annuity so bequeathed and devised to the said plaintiff was to issue and be paid as aforesaid, to wit, at, &c.: And the said J. M. C. in fact further says, that after they the said James, and Elizabeth his wife, late E. C. became and were so seised in right of the said Elizabeth of and in the said messuages, lands, and tenements, with the appurtenances so devised to her the said E. C. as aforesaid, and out of which the aforesaid annuity devised to the said plaintiff as aforesaid was to issue and be paid as aforesaid, they the said James, and Elizabeth his wife continued so seised until and at the time of the exhibiting of the bill on the said plaintiff, and during all that time were pernors and in the receipt and perception of the rents, issues, and profits thereof, and had received sufficient to pay, satisfy, and discharge the aforesaid annuity or yearly sum of twenty pounds so devised and bequeathed to the said J. M. as aforesaid, and payable to him from the said James, and Elizabeth his wife, in right of the said Elizabeth as aforesaid: But the said plaintiff in fact further saith, that afterwards, to wit, on, &c. being the feast of, &c. in that year, twenty-four pounds eighteen shillings and fivepence of the said annuity of twenty pounds of lawful, &c. for one year and the half of another year, ending on that day in the year last aforesaid, five pounds one shilling and sevenpence on account of the said annuity, making together thirty pounds of the said annuity, for and during the said year and the half of another year, having been paid and satisfied to the said J. M. and which sum of five pounds one shilling and sevenpence the said J. M. hereby acknowledges to have received of and from the said James, and Elizabeth his wife in the said one year, and the half of another year became due and payable from the said James and Elizabeth his wife, as such pernors of the profits of the aforesaid devised premises, with the appurtenances to him the said plaintiff, and which said sum of twenty-four pounds eighteen shillings and fivepence still is in arrears and unpaid to him the said plaintiff, to wit, at, &c.; whereby an action hath accrued to the said

said plaintiff to demand and have of and from the said James and Elizabeth his wife the said sum of twenty-four pounds eighteen shillings and fivepence of lawful money of Great Britain; yet, &c. &c. (Common conclusion in debt.) *Drawn by MR. CROMPTON.*

MIDDLESEX, *ff.* Sarah Prince, widow, complains of R. Wells being, &c. of a plea that he render to the said Sarah five hundred and thirty-six pounds of lawful money of Great Britain, which he owes to and unjustly detains from her; for that whereas by certain articles of agreement made, concluded, and agreed upon the fourth day of, &c. 1780, to wit, at, &c. between the said Sarah, by the name &c. of the one part, and the said Richard, by the name, &c. of the other part (one part of which said articles, sealed, &c.) the said Sarah did covenant, promise, and agree to sell and deliver unto the said Richard all the live and dead stock, and also the dairy and brewing utensils of her the said Sarah, upon and belonging to a certain farm and premises therein mentioned at Lady-day then next, that is to say, on, &c. and also all the crops of corn and sward (that is to say, grass) which should be growing and being on the said premises at Lady-day, that is to say, the said twenty-fifth day of March, and harvest-time 1781, according to an appraisement and valuation to be made of the said stock and crops at the times therein and hereinafter mentioned, by two indifferent persons, one to be chosen by the said S. and the other by the said Richard; and in case they should not agree, then by such third person as they two should nominate umpire, which said appraisement of the said live and dead stock should be made on or before Lady-day then next, that is to say, on, &c. and of the sward (that is to say, the grass) and corn at the proper and usual times for appraisement of crops; and the said Richard did thereby covenant, &c. &c. as by the said articles of agreement (relation being thereunto had) will more fully and at large appear: And the said Sarah in fact saith, that after the making of the said articles of agreement, to wit, on, &c. at, &c. an appraisement and valuation were made of the live and dead stock, and also of the dairy and brewing utensils in the said articles of agreement mentioned, according to the tenor and effect, true intent and meaning thereof, and that the same were then and there appraised and valued at a large price or sum of money, to wit, the price or sum of one hundred and ninety-nine pounds of lawful money of Great Britain, whereof the said Richard then and there had notice; whereby and according to the tenor and effect of the said articles of agreement in that behalf, he the said Richard became liable to pay, or cause to be paid unto the said Sarah the said sum of one hundred and ninety-nine pounds within ten days next after such appraisement and valuation as aforesaid; nevertheless the said Richard, although often requested, &c. did not nor would within the said ten days pay, or cause to be paid to the said Sarah the said sum of one hundred and ninety-nine pounds, or any part thereof, but wholly

wholly refused and neglected so to do, whereby an action hath accrued to the said Sarah to demand and have of and from the said Richard the said sum of one hundred and ninety-nine pounds, parcel of the said sum of five hundred and thirty-six pounds above demanded: And the said Sarah in fact further saith, that afterwards, to wit, on, &c. at, &c. in, &c. an appraisement and valuation were made of the said crops of corn and sward in the said articles of agreement mentioned, according to the tenor and effect, true intent and meaning thereof; and that the said crops of corn were then and there valued at another large sum of money, to wit, the sum of twenty five pounds of, &c. whereof the said Richard then and there had notice; whereby and according to the tenor and effect of the said articles of agreement, &c. to wit, the sum of one hundred and fifty-six pounds of, &c. being one moiety of the money due for the said crops of corn, together with the said sum of twenty-five pounds for the said sward, amounting together to a large sum of money, to wit, the sum of one hundred and eighty-one pounds of, &c. on Christmas-day, that is to say, on, &c. and also another large sum of money, to wit, the sum of one hundred and fifty-six pounds of, &c. being the residue of the money due for the said crops of corn on Midsummer-day, &c.; nevertheless the said Richard, &c. &c. the said sum of one hundred and eighty-one pounds, or any part, &c. whereby, &c. the said Sarah in fact further saith, that the said Richard, although often requested, &c. did not nor would on, &c. pay or cause to be paid to the said Sarah the said one hundred and fifty-six pounds (being the residue of the money due for the said crops of corn), or any part thereof, but wholly refused and neglected so to do, whereby an action hath accrued to the said Sarah to demand and have of and from the said Richard the said last-mentioned sum of one hundred and fifty-six pounds, residue of the said sum of five hundred and thirty-six pounds above demanded; yet, &c. (Common conclusion in debt.)

Michaelmas Term, 21. Geo. III.

YORKSHIRE, to wit. Betty Bradley complains of George Whitaker being in the custody of the marshal of the marshallage of our sovereign lord the now king, before the king himself, in a plea that he render to her four hundred pounds of lawful money of Great Britain, which he owes to and unjustly detains from her; for that whereas by certain articles of agreement had, made, concluded, and agreed upon the twenty-second day of March, in the year of Our Lord 1790, at Settle, in the county of York aforesaid, between the said Betty of the one part, and the said George Whitaker of the other part (*which said articles of agreement, sealed with the seal of the said George, and bearing date the day and year aforesaid, the said Betty now brings into court here*); reciting (1) that whereas, and common Counts in debt, and for money had and received, laid out, &c. and an account stated. (1) "to the effect following, that is say,"

as the said Betty Bradley had lately commenced an action in his majesty's court of King's Bench at Westminster, against the said George W. to recover satisfaction in damages for the injury she had sustained for words spoken by the said G. W. of the said B. B. and which action was then at issue for the then next assizes to be holden for the county of York, on Tuesday the twenty-third day of March then instant, and that in order to save the expences attendant upon such a proceeding, the said George W. had applied to and prevailed upon the said Betty Bradley to accommodate the same on the said G. W.'s paying the costs, charges, and expences attending the said action or proceeding, it was by the said articles agreed by and between the said parties thereto, and the said George W. did (2) *for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said Betty Bradley, her executors, administrators, and assigns, that the said G. W. should and would well and truly pay or cause to be paid to the said B. B. or her certain attorney, executors, administrators, or assigns, all such costs, charges, damages, or expences as she the said B. B. should or might pay, lay out, expend, or be put unto in consequence of the said action, or of any thing done in pursuance thereof, and costs to be taxed by the proper officer of the said court between attorney and client, and also that the said G. W. should and would, when thereunto required by the said B. B. her executors, or administrators, ask her such public pardon, and acknowledge himself in the wrong, and sign such an acknowledgment as she the said B. B. should demand and require from him, and also should and would pay all costs and charges of advertising and making public the same in such papers as the said B. B. should think necessary, and promise never to offend again in like manner; in consideration whereof the said B. B. did by the said articles, for herself, her heirs, executors, and administrators, covenant, promise, and agree to and with the said G. W. his executors, administrators, and assigns, that the said action should cease and be no further prosecuted, and that upon payment of all such costs, charges, damages, and expences by the said G. W. to the said B. B. and making such public acknowledgment of the offence as aforesaid, general releases of all action and actions, cause and causes of action and actions should be executed between the said parties, and for the true performance of the said articles of agreement the said G. W. did bind himself, his heirs, executors, and administrators, in the penal sum of one hundred pounds of lawful money of Great Britain, as by the said articles of agreement (reference being thereto had) will more fully appear: (3) And the said B. in fact says, that although she the said B. since the making of the said (4) articles at S. aforesaid, in the county aforesaid, hath done and performed the making thereof, to wit, on the day and year first above mentioned, at S. aforesaid, in the county aforesaid, in consideration that the said B. at the special instance and request of the said G. W. then and there undertaken and faithfully promised the said G. W. to perform and fulfil all things in the said agreement contained on her part and behalf to be performed and fulfilled, he the said George W. and there undertook and faithfully promised the said Betty to perform and fulfil all things mentioned in the said agreement on his part and behalf to be performed and fulfilled." (4) "agreement"*

(2) "thereby"

Penalty tool.
Plaintiff swears
performance...(3) "And the
said agreement
being so made at
aforesaid, after

former

(5) "agreement"

(6) "last aforesaid"

(7) "one hundred pounds"

(8) "one hundred pounds."

ad Count, debt for money had and received.

formed, and been ready and willing to do and perform all things in the said articles of agreement contained on her part and behalf to be done and performed, according to the true intent and meaning of the said articles (5), she the said Betty, in faith of the true performance thereof on the part of the said George, did no further prosecute the said action in the said agreement mentioned, but then and there, to wit, on the day and year (6) *first above-mentioned*, at S. aforesaid, in the county aforesaid, ceased to prosecute the same, of which the said George then had due notice; and although afterwards, to wit, on the eleventh day of Noven ber, in the year aforesaid, to wit, at S. aforesaid, in the county aforesaid, the said B. caused and procured the costs, charges, and expences of her the said B. by her incurred, paid, laid out, and expended in consequence of the said action as between attorney and client, to be taxed by the proper officer of the said court of King's Bench, and the same when so taxed as aforesaid amounted to a large sum of money, to wit, to the sum of sixty-seven pounds (7) of lawful money of Great Britain, whereof the said George afterwards, to wit, on the day and year last aforesaid, at S. aforesaid, in the county aforesaid, had notice, and was then and there requested and required to pay the same to the said B. according to the said agreement; and although the said B. did after the making of the said agreement, and in pursuance thereof advertise and make public a certain concession and acknowledgment in writing, and signed by the said George to the said Betty, of his said wrong towards her in the said agreement mentioned, in a certain public paper, to wit, the paper called the ; and afterwards, to wit, on the day and year last aforesaid, at S. aforesaid, in the county aforesaid, paid the charges and expences attending the same, amounting to another large sum of money, to wit, to the sum of ten pounds, whereof the said George then and there likewise had notice, and was then and there required to pay the several sums of money, amounting in the whole to a large sum of money, to wit, to the sum of (8) sixty-seven pounds to be paid to the said Betty according to the said agreement; yet the said Betty protesting that the said George hath not performed any thing in the said articles contained on his part to be performed, she the said Betty in fact says, that the said George did not when he was so requested, nor hath he at any time hitherto paid to the said Betty the said last-mentioned sum of money, or any part thereof, but hath therein wholly failed and made default, contrary to the form and effect of the said agreement, and of the covenant of the said George in that behalf made as aforesaid, and in manifest breach thereof, to wit, at S. aforesaid, in the county aforesaid, by reason whereof he the said G. forfeited and became liable to pay to the said B. to demand and have of and from the said G. the said one hundred pounds so forfeited as aforesaid, parcel of the said four hundred pounds above demanded: And whereas afterwards, to wit, on the day and year last aforesaid, at S. aforesaid, in the county aforesaid, the said George had and received to and for the use, and on the account

COMMON COUNTS.

account of the said Betty, another large sum of money, to wit, other one hundred pounds of like lawful money, to be paid by the said George to the said B. on request, whereby the said G. became then and there indebted to the said B. in the said last-mentioned sum of money to be paid to her upon request; whereby an action hath accrued to the said Betty to demand and have of and from the said George the said last-mentioned sum of money or parcel of the said four hundred pounds above demanded: And whereas the said Betty afterwards, to wit, on the day and year last-
3d Count, for money
 aforesaid, at S. aforesaid, in the county aforesaid, paid, laid out, and expended for the said George at his special instance and request another large sum of money, to wit, the sum of other one hundred pounds of like lawful money, whereby the said George then and there became indebted to the said Betty in the said last-mentioned sum of money to be paid to her upon request; whereby an action hath accrued to the said Betty to demand and have of and from the said George the said last-mentioned sum of money, or parcel of the said four hundred pounds above demanded: And whereas the said George, to wit, on the day and year last aforesaid, at S. aforesaid, in the county aforesaid, accounted with the said Betty of and concerning divers other sums of money before that time due and owing from the said George to the said Betty, and then being in arrear, and upon that accounting the said George was then and there found to be in arrear and indebted to the said Betty in another large sum of money, to wit, in another one hundred pounds of like lawful money to be paid to the said Betty upon request; whereby an action hath accrued to the said Betty to demand and have of and from the said George the said last-mentioned sum of money, residue of the said four hundred pounds above demanded, or any part thereof to the said Betty, but he to pay the same to the said Betty hath hitherto wholly refused, and still refuses, to the damage of the said Betty of one hundred pounds; and therefore she brings her suit, &c. Pledges, &c.

4th Count, on account stated.

* The 1st Count of this declaration, as altered in *Italic*, will be a precedent for a declaration in debt, on a similar agreement notified.

As the article, above declared upon are under seal, you cannot maintain *assumpsit* upon them, but must bring the action in *Covenant* or *Debt*. I have altered the declaration to the latter, because of the common Counts, which cannot be joined with *Covenant*; and I have

altered them from *assumpsit* to debt, because debt and *assumpsit* cannot be joined in the same declaration.

As the articles are not sealed as was supposed, it was necessary to alter the form of the first Count; but I think debt will lie for the penalty notwithstanding, so that subject to the alterations in the first Count, the declaration will now do.

T. BARROW.

LONDON,

ON AWARD.

Declaration in
debt, for money
under an award
in pursuance of
an order of *Nisi*
Præius.

1. Leon. 72.
Lit. Rep. 312.
Sid. 160, 161.
2. Keb. 623.
659.

LONDON, to wit. Walter Giffon, late of, &c. was summoned to answer unto John Atkinson, in a plea that he render to him five hundred pounds, which he owes to and unjustly detains from him, &c. and thereupon the said plaintiff, by Jacob Atkinson his attorney, says, that whereas on the tenth day of May, A. D. 1758, at London aforesaid, in the parish of St. Mary-le-bow, in the ward of Cheap, divers controversies and disputes had arisen and were then depending between the said plaintiff and the said defendant, and for the determining whereof the said plaintiff and the said defendant, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, submitted themselves to stand to the award and determination of John Brown, James Johnson, and Robert Bagshaw, or any two of them, arbitrators indifferently named, elected, and chosen by and between the said parties to arbitrate, award, order, judge, and determine of and concerning the same controversies and disputes, so as the said arbitrators, or any two of them should make and publish their award in writing of and concerning the premises so referred as aforesaid, on or before the fourteenth day of June then next following; and the said plaintiff in fact saith, that the said John Brown, James Johnson, and Robert Bagshaw, the said arbitrators, having taken upon themselves the burthen of the said arbitration, they the said, &c. (*arbitrators*) afterwards, and within the time above limited, for their making of their said award, to wit, on the second day of June, A. D. 1758, at London aforesaid, in the parish and ward aforesaid, made their award of and concerning the premises so referred to them as aforesaid, in writing under their hands and seals, ready to be delivered to the said parties in difference, or either of them, that desired the same, bearing date the same day and year last aforesaid, and by the said award they the said, &c. (*arbitrators*) did award and determine that the said defendant, his executors, and administrators, some or one of them, did and should, on the second day of August next ensuing the date of the said award, at or in the writing-office of Gyles Stone, situate in Birchin-lane, between the hours of ten and twelve of the clock in the forenoon, well and truly pay, or cause to be paid to the said plaintiff, his executors, administrators, or assigns, the sum of two hundred and forty-seven pounds nine shillings and threepence of good and lawful money of Great Britain; and further by the said award they the said arbitrators did award and determine, that upon payment of the said sum of two hundred and forty-seven pounds nine shillings and threepence by the said defendant, his executors, or administrators, to the said plaintiff, his executors, administrators, or assigns, the said plaintiff and defendant, their executors and administrators, should execute general releases either to the
other

ON AWARDS. (a)

33

other of all actions, claims, and demands whatsoever, from the beginning of the world to the said tenth day of May then last; and the said plaintiff avers that the said defendant did not on the second day of August next ensuing the date of the said award, at or in the writing-office of the said Giles Stone in the said award mentioned, between the hours of ten and twelve of the clock in the forenoon, or at any other time or place whatsoever, hitherto pay or cause to be paid to the said plaintiff or his assigns the said sum of two hundred and forty-seven pounds nine shillings and threepence of good and lawful money of Great Britain, which by the said award was to have been paid by the said defendant to the said plaintiff on that day, and at the time and place aforesaid, according to the form and effect of the said award, but therein wholly failed and made default, and the same and every part thereof is still wholly unpaid to the said plaintiff; whereby an action hath accrued to the said plaintiff to demand and have of the said defendant the said two hundred and forty-seven pounds nine shillings and threepence, parcel of the said sum of five hundred pounds above demanded: And whereas ^{2d Count, on a} the said defendant, on the third day of August, A. D. 1758, at ^{mutualis.} London aforesaid, in the parish and ward aforesaid, borrowed of the said plaintiff two hundred and fifty-two pounds ten shillings and ninepence, to be paid to the said plaintiff when he the said defendant should be thereto afterwards requested; by means whereof an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said two hundred and fifty-two pounds ten shillings and ninepence, residue of the said sum of five hundred pounds above demanded: Yet, &c. [Common conclusion in debt.]

Drawn by MR. WARREN.

Plaintiff need not shew in his declaration all the awards; but such part only as entitles him to his action; and if defend-

ant will impeach the award for any thing, that must come on his part.

MIDDLESEX, to wit. John Nicholson, late of, &c. gen- Declaration in
tleman, was summoned to answer unto James Perry, of a plea debt on an a-
that he render to the said plaintiff seventy-six pounds eleven shil- ward on a re-
lings and tenpence of lawful, &c. which he owes to and unjustly ference to arbi-
detains; and whereupon the said plaintiff, by P. R. his attorney, tration, at the
complains, that whereas in the term of Hilary, in the twenty hall, a juror
eighth year of the reign of our said lord the king, a certain action withdrawn.
in a certain plea of trespass on the case on premises between
the said J. plaintiff and the said J. defendant, in the said court of
our said lord the king, before the king himself, at Westminster,
in the county of Middlesex, was depending and put in issue to be
tried by a jury of the county at the then next sittings of *nisi*
prius, to be holden in and for the city of London; and that where-
as it was in such manner proceeded thereon, that at the same next
sittings held at Guildhall, London, in and for the city of London

DEBT.—ON SPECIALTIES.

aforesaid, on Friday the fourteenth of February, in the said twenty-eighth year of the reign of our said lord the now king, before sir Dudley Ryder, knight, chief justice of our said lord the king, assigned to hold pleas, &c. it was ordered by the same court, by and with the consent of both the said parties, their counsel and attorneys (the same action in the said court at the said sittings, then depending), that one of the jurymen, sworn and impannelled in the said cause, should be withdrawn, and that the matters in difference in the said cause between the said parties aforesaid, should be referred to the arbitration, judgment, final end, and determination of William Lane, of, &c. Thomas Seagood, of &c. and Robert Fox, of, &c. or any two of them, so as they or any two of them should make and publish their award in writing of and concerning the premises between the parties aforesaid, on or before the second day of the then next term; and whereas the time limited for the said arbitrators to make and publish their said award in, was afterwards duly enlarged until the twenty eighth of April, in the said twenty-eighth year of the reign of our said lord the now king; and the said plaintiff saith, that the said William, Thomas, and Robert afterwards, and before the said twenty-fourth of April, in the twenty-eighth year, &c. that is to say, on the twenty third of April in that year, at, &c. in, &c. having taken upon them the burthen of the said arbitration, made and published their award in writing of and concerning the premises as aforesaid to them referred, and thereby awarded, ordered, and adjudged that the said defendant, his executors, or administrators, should, on or before the seventh of May then next, pay or cause to be paid unto the said plaintiff his executors, administrators, or assigns, the sum of forty eight pounds eleven shillings and tenpence of lawful, &c. in full payment, discharge, and satisfaction of all money whatsoever, or any ways due or owing unto the said plaintiff by the said defendant before or at the time of commencing the said action in his majesty's court of King's Bench aforesaid; and the said arbitrators did thereby further award, order, and adjudge, that all actions and suits commenced and brought, or depending between the said parties for any matter, cause, or thing whatsoever, arising or happening before or at the time of referring the matter in difference to arbitration as aforesaid, should from thenceforth cease and determine, and be no further prosecuted by the said parties, or by their or either of their names, consent, or procurement; and that the said arbitrators did thereby further award, order, and adjudge, that upon payment of the said forty-eight pounds eleven shillings and tenpence, so awarded as aforesaid, by the said defendant, his executors, or administrators, to the said plaintiff, his executors, administrators, or assigns, the said plaintiff and defendant, their executors, or administrators, should *within two days after the taxation* of costs between the said parties in the said action, and payment thereof to the said plaintiff, his executors, administrators, or assigns, make, seal, and execute to each other general releases of all the matters in difference in the said cause: And the said plaintiff

Time enlarged
for making the
award.

AWARD.—UMPIRE.

plaintiff in fact saith, that before or at the time of commencing the said action in his majesty's court of King's Bench aforesaid, or at the time that the matters aforesaid were as aforesaid referred to the arbitrament, final end, and determination of the said W. T. and R. as aforesaid, there was no other money whatsoever any ways due or owing to the said plaintiff by the said defendant, but what was the matter in difference in the said cause, and that no action or suit had been or was commenced, brought, or depending between the said parties for any matter, cause, or thing whatsoever arising or happening before or at the time of referring the matters in difference to arbitrament aforesaid, other than the said action which was depending and put in issue to be tried as aforesaid; and the said plaintiff also in fact saith, that after the said J. F. and R. had made their said award in writing of and concerning the premises between the said plaintiff and the said defendant, that is to say, on the sixteenth of May, A. D. 1755, the costs in the said action were in due manner taxed at the sum of twenty-eight pounds of lawful, &c. that is to say, at, &c. of all which premises the said defendant, *after the expiration of two days next after the taxation of costs*, that is to say, on the twentieth of May 1755, at, &c. had notice; by reason whereof an action hath accrued to the said plaintiff to demand and have of the said defendant, as well the said sum of forty-eight pounds eleven shillings and tenpence by the said award awarded and ordered as aforesaid, as the aforesaid twenty-eight pounds, the costs taxed in the said action between the said plaintiff and the said defendant, amounting together to the sum of seventy-six pounds eleven shillings and tenpence; nevertheless the said defendant, although often requested, &c. [Common conclusion in debt.] Damages twenty pounds; suit, &c.

LANCASHIRE, to wit. Thomas Lambe complains of John Stivesey, being, &c. in a plea that he render to the said plaintiff sixty pounds which he owes to and unjustly detains from him; for that whereas on the eighth of August, A. D. 1758, at, &c. in, &c. divers disputes, differences, and controversies had arisen and were then and there depending between the said plaintiff and the said defendant, and thereupon, for the putting an end to the said differences and disputes, they the said plaintiff and defendant on the same, &c. at, &c. submitted themselves to stand the award, order, arbitration, final end, and determination of James Mason, of Sleaf, within the parish of Bury, in the said county of Lancatter, husbandman, and Laurence Bleatdall, of Bury aforesaid, officer of excise, arbitrators, indifferently named, elected, and chosen, as well on the part and behalf of the said defendant as of the said plaintiff, to award, order, judge, and determine of and concerning the said disputes, differences, and controversies, so as the said award should be made in writing under the hands and seals of the said arbitrators, and ready to be delivered to the said parties on or before the eighth of September then next ensuing, and if the

Declaration
debt on an a-
ward, where an
umpire was cho-
sen who made
his award.

said arbitrators should not make and draw up their said award in writing under their hands and seals as aforesaid, ready to be delivered to the said parties on or before the said eighth of September then next ensuing, then the said plaintiff and defendant did then and there submit themselves to stand, to abide, perform, and keep the award, umpirage, judgment, final end, and determination of the said J. G. of, &c. umpire, indifferently elected and chosen between the said parties for hearing, composing, ending, and finally determining the said difference, disputes, and controversies, so as the said umpire should make and draw up his said award, umpirage, and determination in writing under his hand and seal, and ready to be delivered to the said parties on or before the eighth of October then next ensuing: And the said plaintiff in fact saith, that the said J. M. and L. B. the arbitrators aforesaid, did not make their award in writing concerning the premises under their hands and seals, ready to be delivered to the said parties within the time in that behalf limited as aforesaid, but entirely omitted so to do: And the said plaintiff farther in fact saith, that afterwards, and within the time in that behalf limited for the aforesaid J. G. to make his award and umpirage as aforesaid concerning the premises, to wit, on the ninth of October, A. D. 1751, at, &c. he the said J. G. having taken upon himself the burthen of the said award and umpirage, in due manner made his award, umpirage, and determination in writing of and concerning the premises so referred to him as aforesaid, and thereby he the said J. G. did then and there order and award that all actions, suits, quarrels, and controversies, whatsoever had, made, moved, arisen, or depending by or between the said parties or either of them, at any time before the eighth of August then last past, either in law or in equity, for any manner of cause whatsoever touching the said differences and disputes, should cease, determine, and be no further prosecuted or proceeded in; and the said J. G. did then and there by his said award and umpirage further award, order, and determine that the said defendant, his executors or administrators, should pay or cause to be paid unto the said plaintiff, his executors or administrators, the sum of thirty pounds, at the house of George Honarks, being the sign of, &c. in Bury, aforesaid, on Thursday the second of November then next, between the hours of two and four of the clock in the afternoon of the same day; and lastly the said J. G. did by the said award and umpirage then there order and award, that on payment of the said sum of thirty pounds before mentioned as aforesaid, each of the said parties should execute to the other a general release of all matters and differences between them, from the beginning of the world until the said eighth of August then last past, of all which premises he the said defendant afterwards, to wit, on the said ninth of October, in the year aforesaid, at, &c. aforesaid, had notice: And the said plaintiff in fact further saith, that all actions, suits, quarrels, and controversies whatsoever, had, made, moved, arisen, or depending by or between the said parties, or either of them, at
any

AWARD.—REFERENCE AT NISI PRIUS.

any time before the said eighth of August in the said award or umpirage in that behalf mentioned, did then and there, on the part and behalf of the said plaintiff, entirely cease and determine, and have not been any further prosecuted or proceeded in: Yet the said defendant did not pay or cause to be paid to the said plaintiff the said sum of thirty pounds so awarded to be paid as aforesaid, or any part thereof, at the said time and place appointed for the payment thereof as aforesaid, or at any other time or place whatsoever, but hath therein wholly failed and made default; whereby an action accrued to the said plaintiff to demand and have of the said defendant the said thirty pounds, parcel of the said sixty pounds above demanded: And whereas the said defendant afterwards, to wit, on the second of November, in the year aforesaid, at, &c. borrowed of the said plaintiff thirty pounds, residue of the said sixty pounds above demanded, to be paid to the said plaintiff when he the said defendant should be thereto afterwards requested; yet the said defendant, although often requested, &c. Damages ten pounds.

J. WALLACE.

I have perused this declaration, and think it properly drawn; but the word *felonus* was improperly inserted in the arbitration bonds; yet, as in fact the disputes submitted were merely of a civil nature, I apprehend that such mistake in the penning of the bonds would defeat the award.

It might be best perhaps to omit the first Count of this declaration, which

was upon a bond generally, and touch upon the latter only, which is founded on the award itself; for the former will introduce special pleadings which would probably end in a demurrer, and by that means occasion more expence (and possibly delay) to the plaintiff.

J. YATES.

Michaelmas Term, 23. Geo. III.

MIDDLESEX, to wit. Henry Butcher complains of Thomas Whitfield, before, &c. of a plea that he render to the said Henry thirty-two pounds of lawful money of Great Britain, which he owes to and unjustly detains from him; for that whereas heretofore, to wit, at the sitting of *nisi prius* holden at Westminster-hall, in the county of Middlesex aforesaid, on Monday the twentieth day of April, in the year of Our Lord 1782, before the right honourable the earl of Mansfield, lord chief justice of our lord the king, assigned to hold pleas before the king himself, a certain cause, that is to say, an action of trespass *quare clausum fregit*, came on to be tried between the said Thomas Whitfield, plaintiff, and the said Henry Butcher, defendant, and a certain jury was then and there in due manner impannelled and sworn to determine the same; and whereupon at the said sitting of *nisi prius* holden as aforesaid, before the jury so impannelled and sworn had given any verdict in the same, to wit, on the day and year aforesaid, at Westminster, in the county of Middlesex aforesaid, a certain order or rule of reference was made, whereby

Declaration
debt upon an
award made by
the clerk of the
nisi prius, for
pursuance of
rule of reference
made at the trial
after the jury
sworn, one being
withdrawn
by consent.

it was ordered by the court, by and with the consent of the plaintiff and defendant, their counsel and attornies, that the last jurymen sworn and impannelled should be withdrawn out of the pannel, and that all matter of difference between the said parties in that cause should be referred to the award, order, arbitrament, final end, and determination of Thomas Lowton, of Middle temple, London, gentleman, so as he should make and publish his award in writing of and concerning the premises in question between the said parties, on or before the second day of Trinity term then next ensuing, and that the said parties should fulfil and keep such award so to be made by the said arbitrators as aforesaid; and it was also thereby then and there ordered, by and with such consent as aforesaid, that the costs of the said cause should abide the event and determination of the said award, and that the costs of the reference were to be in the discretion of the said arbitrator, who should direct and award by whom and to whom, and in what manner the same should be paid, and it was likewise then and there ordered, by and with the consent as aforesaid, that the plaintiff and defendant respectively were to be examined upon oath, to be sworn before the said lord chief justice, or some other justice of the court of our said lord the king, before the king himself, if thought necessary by the said arbitrator, all books, papers, and writings touching and relating to the matters in difference between the said parties as the said arbitrator should think fit, and that the witnesses of the plaintiff and defendant respectfully were to be examined upon oath, to be sworn before the said lord chief justice, or one other justice of the said court; and it was likewise thereby then and there ordered, by and with such consent as aforesaid, that neither the plaintiff nor defendant should prosecute any action or suit in any court of law or equity against the said arbitrator, or bring or prefer any bill in equity against each other of and concerning the premises so as aforesaid referred; and it was thereby then and there further ordered by and with such consent as aforesaid, that if either party should by effected delay or otherwise wilfully prevent the said arbitrator from making an award, he should pay such costs to the other as the said court should think reasonable and just; and lastly, it was then and there ordered by the like consent as aforesaid, and the said court of our said lord the king might be prayed that the said order might be made a rule of the same court, as by the record thereof, reference being thereunto had, will more fully and at large appear: And whereas after the making of the said order, and before the making of any award by the said Thomas Lowton in pursuance thereof, the time for making such award was by and with the mutual consent of the respective attornies of and for the said Thomas Whitfield and Henry Butcher duly enlarged, to wit, from the second day of Trinity term aforesaid until the twelfth day of June then next, and from thence until the fourteenth day of June following inclusive, to wit, at Westminster aforesaid; and whereas afterwards, and within the time for that purpose limited, to wit, on the fifteenth day of June, in the year aforesaid,

Time for making the award enlarged.

AWARD.

at Westminster aforesaid, the said Thomas Lowton, the arbitrator, in pursuance of the said order or rule of reference, having heard the said parties by themselves or their attornies, their allegations and answers touching the matter in question between them, examined their witnesses upon oath, and having minutely considered of the matters so referred to him as aforesaid, did make and publish his award in writing of and concerning the same, and did thereby award, adjudge, and determine that the said T. W. had not then any cause of action from any right, claim, or title to the two pieces or parcels of land respecting which the said action was brought, and therefore did award and order that the said T. W. should on the twenty-fourth day of July then ensuing, well and truly pay, or cause to be paid to the said H. B. or his assigns, the sum of ten pounds for the costs and charges of the said H. B. respecting the said reference, and that his award, together also with the costs of suit of him the said H. B. respecting the said cause to be in the mean time taxed by the proper officer, as by the said award, reference being thereunto had, will more fully appear: And whereas afterwards and before the said twenty-fourth day of July then next ensuing, to wit, on the twentieth day of July, in the year aforesaid, the costs of suit of him the said H. B. respecting the said cause were taxed by the proper officer in that behalf, that is to say, by Edward Benton, esquire, master of the office of pleas of the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, and the said officer did then and there by his allocator allow and ascertain the *quantum* or amount of such costs at the sum of thirty-two pounds, that is to say, at Westminster aforesaid, whereof the said T. W. afterwards, to wit, on the day and year last aforesaid there had notice: And although the said T. W. in pursuance and part performance of the said award, did on the said twenty-fourth day of July then next ensuing, that is to say, on the twenty-fourth day of July, in the year aforesaid, at Westminster aforesaid, pay to the said H. B. the sum of ten pounds for the costs and charges of him the said H. B. respecting the said reference and the award aforesaid; yet the said H. B. in fact saith, that the said T. W. although often requested, not further regarding the said award, did not, nor would on the said twenty-fourth day of July then next, pay or cause to be paid, nor hath he at any time since hitherto paid, or caused to be paid to the said H. B. the said sum of thirty-two pounds, being the costs of suit of him, H. B. respecting the said cause as taxed aforesaid, or any part thereof, but hath therein wholly failed and made default; whereby an action hath accrued to the said H. B. to demand and have of and from the said T. W. the said sum of thirty-two pounds above demanded. (Common conclusion in debt.)

H. B. of, &c. the above named plaintiff, maketh oath that T. W. the above-named defendant, is justly indebted to him this deponent in the sum of ninety-two pounds, being the costs of

(a) Affidavit
hold to bad
debt upon
award--

(a) See Practical Forms,

suit

DEBT.—ON SPECIALTIES.

suit awarded to this deponent upon and by virtue of a certain award in writing, bearing date, &c. and made between this deponent, and the said T. W.

Declaration in debt, upon an award agreeable to an order of reference made in court upon the withdrawing of a juror, where one of the arbitrators refused to act.

CORNWALL, to wit. Matthew Wills, late of, &c. surgeon, was attached to answer unto James Macaineek and James Pierce, gentlemen, assignees of the estate and effects of D. P. being a bankrupt, according to the form and effect of the statutes concerning bankrupts made and provided, of a plea that he render to them one hundred and fifty pounds of lawful, &c. which he owes to and unjustly detains from them, &c. and thereupon the said plaintiffs, assignees as aforesaid, by John Allen, their attorney, complain; for that whereas on, &c. at, &c. divers differences, controversies, and disputes had happened and arisen and were depending, and suits at law and in equity were also depending between the said plaintiffs, assignees as aforesaid, and the said defendant; and whereas at the assizes held at, &c. in and for the county of C. aforesaid, on, &c. a certain cause then depending between the said plaintiffs, assignees in form aforesaid, and the said defendant was then and there to have been tried between them: And whereas by an order made at the said assizes so held at, &c. in and for the county aforesaid, on, &c. to wit, at, &c. in the said cause wherein the said plaintiffs as assignees of the estate and effects of the said D. P. a bankrupt, were plaintiffs, and the said defendant was defendant; it was ordered by the court, by and with the consent of all parties, their counsel and attorneys, that the last of the jurors impanelled, tried, and sworn to determine the issue joined between the said parties in that cause should be withdrawn, and that all matters then in difference between the said parties should be referred to the award, arbitrament, judgment, and final determination of Henry James Daubeney, and D. V. both of I'. and J. R. of, &c. in the, &c. filed in the said order gentlemen, or to any two of them; and that the said parties should perform the award of the said arbitrators, or any two of them, so as they should make and publish the same of and concerning the premises in writing on or before the first day of the then Michaelmas term; and it was also ordered by and with the like consent that such witness or witnesses as should be produced by the said parties, or any of them, before the said arbitrators for examination should be sworn before a commissioner of his majesty's court of C. B. and that the bill in equity then depending between the said parties should be dismissed upon making the said award, with or without costs, as the said arbitrators should determine; and that no other bill in equity should be preferred by either or any of the said parties against the other for or relating to the matters in dispute between them; and it was further ordered by and with the like consent, that no bill in equity should be preferred by the said parties, or any of them, against the said arbitrators, or either of them, for or in respect of any award they should make in the said premises;

AWARD—ORDER OF REFERENCE AT NISI PRIUS.

and that that order should be made a rule of his majesty's court of C. B. if the justices of that court should so please, as in and by the said order, relation being thereto had, more fully and at large appears; and the said plaintiffs, assignees as aforesaid, in fact say, that the said plaintiffs, assignees as aforesaid, for themselves, and the said defendant for himself, did on, &c. submit to such award; and the said H. J. D. and D. V. two of the arbitrators aforesaid, having taken upon themselves the business and charge of the said award, and being willing to set the parties at peace and concord, by making a final end and determination of the matters in controversy, and having heard at large the grievances, allegations, and proofs of the said parties, and having examined the witnesses produced before them on oath, and duly and deliberately weighed and considered the whole, did on, &c. being within the time limited as aforesaid for the making of their award of and concerning the premises so referred as aforesaid, at, &c. make and publish their award in writing of and concerning the premises so referred to them as aforesaid under their hands and seals, and ready to be delivered to the said parties in difference or to such of them as desired the same, on, &c. (the said J. R. after having entered upon the business of the said award with them, the said arbitrators refusing to join with them in the said award) and by the said award they the said arbitrators did award, order, and adjudge that the said defendant, his executors, or administrators should on, &c. then next, between the hours of, &c. in the forenoon, at the house of J. P. known by the sign of, &c. in the front parlour there or so near the same as might be, well and truly pay, or cause to be paid unto the said plaintiffs, their executors, and administrators, the full and whole sum of one hundred and fifty pounds of lawful, &c. in full satisfaction and discharge of the debts, dues, claims, and demands which they the said plaintiffs or either of them had or could have or make upon or against the said defendant, for or in respect of any matter, cause, or thing whatsoever, to the said eighteenth day of, and did and should within the time, and at the place aforesaid, at his or their own proper costs and charges, deliver or cause to be delivered unto the said plaintiffs, or their attorney, executors, or administrators, a general release and discharge, duly executed, and sufficient for releasing and discharging them the said plaintiffs, their executors, and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, sum and sums of money, accounts, reckonings, bills, bonds, judgments, executions, quarrels, controversies, trespasses, damages, and demands whatsoever, both in law and in equity, and otherwise howsoever, which against the said plaintiffs, or either of them, *either in their own rights or as assignees as aforesaid*, he the said defendant had, or which he, his heirs, executors, or administrators could, should, or might at any time or times thereafter claim, challenge, or demand for or by reason or means of any matter, cause, or thing whatsoever, from the beginning of the world to the said eighteenth day of, &c. then last past: And the said

DFBT.—ON AWARD.

said two arbitrators did also by their said award further award, order, and adjudge, that upon and immediately after such payment of the aforesaid sum of one hundred and fifty pounds, and delivery of such release duly executed unto the said plaintiffs as aforesaid, they the said plaintiffs should at their own proper costs and charges deliver, or cause to be delivered unto him the said defendant, or his attorney, executors, or administrators, a general release and discharge duly executed, and sufficient for releasing and discharging him the said defendant, his executors, or administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, sum and sums of money, accounts, reckonings, bills, bonds, judgments, executions, quarrels, controversies, trespasses, damages, and demands whatsoever, both in law and in equity, and otherwise howsoever, which against the said defendant, they the said plaintiffs, or either of them in their own right, or as assignees as aforesaid ever had, or which they or either of them, their or either of their heirs, executors, and administrators could, should, or might at any time or times thereafter have, claim, challenge, or demand, for or by reason and means of any act, matter, cause, or thing whatsoever, from the beginning of the world unto the said eighteenth day, &c. then last: And the said arbitrators did by their said award further award, order, and determine, that the aforesaid bill in equity depending between the said parties, and the said recited order to be dismissed upon making their award, should be dismissed without costs, as by the said award, relation being thereto had, will more fully appear; and the said plaintiffs further say, that there was not any other matter or thing whatsoever, except between the said plaintiffs as assignees as aforesaid, and the said defendant, depending between the said parties or any of them at the time of the said submission, or at the time of the making of the said award, or on the said eighteenth day, &c. depending between the said plaintiffs, or either of them, and the said defendant; and that the said defendant did not, on, &c. in the said award mentioned, between the hours of ten and twelve o'clock in the forenoon, at the said house of, &c. in the town of F. aforesaid, in the front parlour there or so near the same as might be, or at any other time or place hitherto pay, or cause to be paid unto them the said plaintiffs, or to either of them, the said sum of one hundred and fifty pounds in the said award mentioned, or any part thereof, but therein wholly failed and made default, by means whereof an action hath accrued, &c.: Yet the said defendant, although often requested, has not yet rendered the aforesaid sum of one hundred and fifty pounds above demanded, or any part thereof to the said plaintiffs, assignees as aforesaid, or to either of them, but he to render the same, or any part thereof to the said plaintiffs, assignees as aforesaid, or to either of them, have hitherto wholly refused, and still refuses so to do, to the damage of the said plaintiffs, assignees as aforesaid, of forty pounds; and therefore they bring suit, &c.

Drawn by MR WARREN.

YORKSHIRE,

DEBT.—ON AWARD—UMPIRE.

Trinity Term, 29. Geo. III.

YORKSHIRE, to wit. John Clayton complains of William Fox and James Topham being, &c. of a plea that they render to him the sum of seventy-seven pounds five shillings of lawful money of Great Britain, which they owe to and unjustly detain from him, &c.; for that whereas before the time of the submission hereafter next mentioned, at Bradford, in the county of York, certain controversies and disputes had arisen and were depending between the said John and the said William, and thereupon the said John and the said William for themselves severally, and the said James as a surety on behalf of the said William for the settling and determining heretofore, to wit, on the twenty-third day of March 1789, at B. aforesaid, in writing submitted themselves to the award, arbitrament, and determination of one William Hudson and one Jeremiah Thornton, arbitrators indifferently named, as well on the part of the said William Fox and James as of the said John, to arbitrate, judge, and determine of and concerning all controversies and demands whatsoever between the said parties, or any of them, so as the said award were made in writing and ready to be delivered to the parties requesting the same on or before the twenty-third day of April next ensuing the dates of such submission; but if the said arbitrators should not make such their award by the time aforesaid, then to the award, arbitrament, umpirage, and determination of such third person as umpire, as they the said arbitrators should name, elect, and chuse between the said parties of and concerning the premises, so as the said umpire should make his award or umpirage of and concerning the same in writing on or before the first day of March then next; and the said John saith, that the said William Hudson and Jeremiah Thornton, the said arbitrators, after the said submission, to wit, on the seventeenth day of April, in the year aforesaid, at B. aforesaid, duly named, elected, and chose one James Pearson umpire between the said parties of and concerning the premises, according to the form and effect of the said submission; and that the said arbitrators did not make any award of or concerning the same within the time to them limited for the purpose: And the said John further saith, that the said umpire so named, elected, and chosen as aforesaid, having taken upon himself the burthen of the said umpirage, did afterwards, and within the time to him limited for the purpose as aforesaid, to wit, on the thirtieth day of April, in the year aforesaid, at B. aforesaid, make and publish his award and umpirage of and concerning the premises in writing, under his hand and seal, ready to be delivered to the parties requesting the same (and which the said John now brings here into court), and did thereby award, arbitrate, and determine that the said William F. and James, or one of them, should pay, or cause to be paid unto the said John, his executors, or administrators, the sum of twenty-five pounds fifteen shillings of lawful, &c. at the house of William Fox, the sign of the Horse and Groom, in B. aforesaid, innkeeper, upon the eighteenth day of May next ensuing the date of

Debt on award by umpire against defendant and surety, who entered into bond to be satisfied by his detention.

DEBT.—ON SPECIALTIES.

of the said umpirage, between the hours of two and four of the clock in the afternoon of the same day, and the further sum of twenty-five pounds fifteen shillings of like, &c. at the same hour, upon the sixteenth day of November then next ensuing, and in default of the first-mentioned sum of twenty five pounds fifteen shillings upon the day and time first mentioned for that purpose, then that the said William F. the defendant and James, or one of them, should pay to the said John, his executors, or administrators, the whole sum of fifty-one pounds ten shillings upon demand; and that upon the payment of the two several sums of twenty-five pounds fifteen shillings, and twenty-five pounds fifteen shillings, each party should execute to the other general releases to the day of the date of the said submission, as by the said umpirage, relation being thereunto had, will more fully appear; and the said John further saith, that the said William F. the defendant and James did not, nor did either of them pay, or cause to be paid unto the said John the said sum of twenty-five pounds fifteen shillings in the said umpirage first mentioned, or any part thereof, at the time and place thereby appointed for the payment thereof, but although the said John then and there requested them to pay the same, therein wholly made default; and that thereupon the said John, afterwards, to wit, on the seventeenth day of May, in the year aforesaid, at B. aforesaid, demanded the whole sum of fifty-one pounds ten shillings in the said umpirage from the said William F. the defendant and James, who then and there wholly refused and neglected to pay the same; whereby an action hath accrued to the said John to demand and have of and from the said William Fox the defendant and James, the said sum of fifty-one pounds ten shillings, parcel of the said sum of seventy seven pounds five shillings above demanded: And whereas before the time of the submission hereafter mentioned, at B. aforesaid, certain other controversies and disputes had arisen and were depending between the said John and the said William, and thereupon the said John and the said William for themselves severally, and the said James as a surety on the behalf of the said William for the settling and determining, heretofore, to wit, on the said twenty-third day of March, in the year aforesaid, at B. aforesaid, in writing submitted themselves to the award, arbitrament, and determination of the said William Hudson and Jeremiah Thornton, arbitrators indifferently named, as well on the part of the said William F. the defendant and James, as of the said John, to arbitrate, judge, and determine of and concerning all controversies and demands whatsoever between the said parties, or any of them, so as the said award were made in writing and ready to be delivered to the parties requesting the same on or before the twenty-third day of April next ensuing the date of such last-mentioned submission; but if the said arbitrators should not make such their award by the time aforesaid, then to the award, arbitrament, umpirage, and determination of such third person as umpire as they the said arbitrators should name, elect, and chuse between the said parties of and concerning the

AWARD—UMPIRE.

the premises last aforesaid, so as the said umpire should make his award or umpirage of and concerning the same in writing before the first day of May then next, and the said John saith, that the said William Hudson and Jeremiah T. the said arbitrators, after the said last-mentioned submission, to wit, on the said seventeenth of April, in the year aforesaid, at B. aforesaid, duly named, elected, and chose the said James Pearson umpire between the said parties, of and concerning the premises last aforesaid, according to the form and effect of the said last mentioned submission, and that the said arbitrators did not make any award of and concerning the same within the time to them limited for that purpose; and the said John further saith, that the said umpire so named, elected, and chosen as last aforesaid, having taken upon himself the burden of the said last-mentioned umpirage, did afterwards and within the time to him limited for that purpose as aforesaid, to wit, on the said thirtieth day of April, in the year aforesaid, at B. aforesaid, make and publish his award or umpirage of and concerning the said last-mentioned premises in writing, under his hand and seal, ready to be delivered to the parties requesting (and which the said John now brings here into court), and did thereby, amongst other things, award, arbitrate, and determine that the said William F. the defendant and James, or one of them, should pay, or cause to be paid unto the said John, his executors, or administrators, the sum of twenty-five pounds fifteen shillings of lawful, &c. at the house of William Fox, the sign of the Horse and Groom, in B. aforesaid, innkeeper upon the sixteenth day of May next ensuing the date of his said last-mentioned umpirage, between the hours of two and four of the clock in the afternoon of the same day, as by the said last-mentioned umpirage, relation being thereunto had, more fully appears: And the said John further says, that the said William F. the defendant and James did not, nor did either of them pay, or cause to be paid unto the said John, the said sum of twenty-five pounds fifteen shillings in the said last award mentioned, or any part thereof, at the time and place thereby appointed for the payment, but that they and each of them wholly refused and neglected to pay the same, whereby an action hath accrued to the said John to demand and have of and from the said William F. the defendant and the said James, the said last-mentioned sum of twenty-five pounds fifteen shillings, residue of the said sum of seventy-five pounds five shillings above demanded; yet the said William F. the defendant and James, although often severally requested, &c. have not, nor hath either of them paid the said sum of seventy-seven pounds five shillings above demanded, or any part thereof to the said John, but have and each of them hath hitherto wholly refused, and still refuses, and each of them refuses so to do, to the damage of the said John of pounds; and therefore he brings suit, &c.; pledges, &c.

S. MARRYATT:

LANCASHIRE.

DEBT.—ON SPECIALTIES.

Declaration on an award made pursuant to a rule of court on a motion for a new trial, whereby the defendant was ordered by the arbitrators to give up all title deeds, &c. and pay all costs.
Four times the amount of the costs of the new trial, and of the replevin suit.

LANCASHIRE, *ss.* John Drinkwater complains of Margaret Overall being, &c. by virtue of a writ of *latitat* issued out of the court of our lord the king, before the king himself here against her the said M. at the suit of him the said John, and returnable before our lord the king at Westminster, on, &c. now last past, in a plea that the render to him the said John eight hundred and fifty-six pounds of lawful, &c. which she owes to and unjustly detains from him, &c.; for that whereas heretofore, to wit, on, &c. at, &c. divers differences, controversies, and disputes had arisen and were subsisting between the said John and M. and one J. W. an infant and heir at law of J. W. deceased, and a certain action or suit at law in replevin had been brought and commenced by the said J. against the said M. in the court of common pleas at L. and a trial thereof had, and a rule for a new trial thereof in due manner granted and obtained upon payment of certain costs, amounting to a large sum of money, to wit, the sum of forty-four pounds before then paid by the said J. and such new trial was about to be had and to take place + at the assizes held at L. for the county palatine of L. on, &c. but by a certain order made at the said assizes on, &c. to wit, at, &c. in the said cause or suit between the said J. and M. and by the consent of counsel and attorneys on both sides, it was ordered by the court that the last juror impanelled and sworn to try the issue in the said cause should be withdrawn, and that that cause, and all matters in difference between the parties thereto and the said infant and heir at law of J. W. (that is to say, the said J. W. hereinbefore mentioned, who upon the undertaking of one J. E. therein mentioned, was made a party to the said order) or any of them, as well in law as equity, should be referred to the award, final end, order, and determination of R. P. of, &c. in, &c. and G. L. of, &c. in, &c. barristers at law, or the survivor of them, who were to enquire as well into the title as all matters respecting the estates in question, and all accounts between the parties; and it was also by the said order ordered that the costs of the said cause between the said J. and M. and also the costs of and upon the new trial being granted, and also of the arbitration should be in the discretion of the arbitrators, and that the parties should bring their witnesses to such place or places as the said arbitrators should appoint, otherwise they should be at liberty to proceed in making their award, and that the parties should be examined upon oath if the arbitrators should think proper, and that such award should be made in writing ready to be delivered to the said parties on, &c. and that no bill in equity should be filed by either or any of the said parties against the said arbitrators, or either of them, relative to his or their award, as by the said order (reference being thereto had) fully appears: And the said J. in fact further says, that the said J. D. and M. and the said J. W. by the said J. E. did on, &c. at, &c. submit themselves, and each and every of them did submit and agree to and with the other of them to stand to such award, and that the said arbitrators having taken upon themselves the burthen

AWARDS:

burthen of the said award, and having heard and attended to the allegations of the said J. D. M. and J. E. on behalf of the said infant, or of their respective attornies or agents, and the evidence by them respectively laid before them, the said arbitrators did afterwards, to wit, on, &c. at, &c. in, &c. being within the time limited as aforesaid for the making thereof, at, &c. make and publish their award in writing of and upon the premises so to them referred as aforesaid, under their hands and seals, ready to be delivered to the said parties in difference, or either of them requiring the same, on or before the said first day, &c. and by the said award (which the said J. now brings into court her.) they the said arbitrators did, amongst other things, award that the said M. should on or before the twenty-second, &c. pay to the said J. E. for the use of the said infant the sum of forty-eight pounds; and the said arbitrators did, in and by their said award, further award and determine that the said M. should repay to the said J. his executors, or administrators, the sum of forty-four pounds, being the taxed costs of the aforesaid new trial by him paid to her, and that the said M. should also pay to the said J. his costs as plaintiff in the said replevin cause to be taxed by the prothonotary of the court of common pleas at L. or his deputy, the said several costs to be paid in two calendar months next after the costs in the said cause should be taxed, and notice of such taxation should be given to or left at the usual place of abode of the said M.; provided nevertheless, and the said arbitrators did, by and with the consent of the said J. and J. E. on behalf of the said infant to them in that behalf then given, order and award, that if the said M. did and should, rather than pay the said sum of forty-eight pounds, and the said costs of the said new trial and costs to be taxed as aforesaid in the said replevin cause, choose to convey, and should at the request and costs of the said J. E. as the said infant's guardian for the time being, and by such conveyances and assurances in the law as the said J. E. or such guardian or his counsel should advise, were it by fine or otherwise, well and effectually convey and assure to the said infant and his heirs for ever, all the estate and estates whatsoever in possession, remainder, or reversion, contingency, or otherwise howsoever of, and claimed by her the said M. and all other charges, claims, and demands of her the said M. of, into, upon, and out of all and singular the premises in the said award particularly mentioned, and situate in and near S. in, &c. with their appurtenances, and should deliver up upon oath to the said infant or his heirs all title deeds, evidences, and writings in her custody or power relating to the title of the said premises, then and in such case from and immediately after such conveyance as aforesaid, should be so as aforesaid made, executed, and delivered to the said J. E. as such guardian as aforesaid, the said arbitrators did award that the said estate and interest of the said J. in the premises under a certain contract in the said award before-mentioned, of the first day, &c. should be absolute and not determinable as aforesaid, as by the said award (relation being thereto had) will more fully

DEBT:—ON AWARD:

fully appear: And the said J. avers, that the costs of him the said J. as plaintiff in the said replevin cause, and by the said arbitrators awarded, ordered, and directed to be taxed by the prothonotary of the said court of common pleas, or his deputy, were, after the making of the said award, to wit, on, &c. accordingly taxed, and the same amounted to a large sum of money, to wit, the sum of one hundred and sixty-nine pounds; and that the said M. had then and there notice of such taxation, and of the amount thereof, according to the directions, tenor, and effect of the said award in that behalf: And the said J. D. further says, that the said M. did not, although requested so to do, repay to him the said sum of forty-four pounds so by him paid to her for the taxed costs of the new trial as aforesaid, and also the said costs of him the said J. as plaintiff in the said replevin cause so taxed as aforesaid, or any part thereof in two calendar months next, the said last mentioned costs were so taxed as aforesaid, nor hath she as yet paid the same, or any part thereof, nor hath she well and discreetly, or in any other manner whatsoever, conveyed and assured to the said infant (that is to say, the said J. W. hereinbefore mentioned) and his heirs for ever (although she could and might have so done, and upon the terms, and according to the tenor of the said award in that particular) all the estate and estates whatsoever in possession of her the said M. of, into, upon, and out of all and singular the said premises in and near S. as aforesaid, with their appurtenances, or any or either of them, or any part thereof, nor hath she as yet delivered up upon oath or otherwise to the said infant all title deeds, evidences, and writings in her custody or power relating to the title of the said premises, or any or either of them, or any part thereof, but hath therein wholly failed and made default, to wit, at, &c. whereby and by means whereof an action hath accrued to the said J. to demand and have of and from the said M. a large sum of money, to wit, the sum of two hundred and fourteen pounds, being the amount of the said several costs so awarded to be paid to him as aforesaid, parcel of the said sum of eight hundred and fifty-six pounds above demanded: And whereas heretofore, to wit, on, &c. divers differences, &c. had arisen, &c. between the said J. and M. and one J. W. and a certain action or suit at law in replevin had been brought and commenced by the said John against the said M. in the court of common pleas at L. and a trial thereof had, and a rule for a new trial thereof in due manner granted and obtained upon payment of certain costs, amounting to a large, &c. the sum of forty-four pounds before then paid by the said J. D. and such new trial was about to be had and to take place; and thereupon the said J. and M. and the said J. W. did then and there, to wit, on, &c. at, &c. submit themselves, and each and every of them did submit all matters in difference between them as last aforesaid, together with the costs of the said last-mentioned action or suit between the said J. and M. and the costs of and upon the granting of the said last-mentioned new trial, to the award, &c. of the said R. P. and G. L. so as the said award was made in writing ready to be delivered to the said

The amount of both costs.

24 Count.

DEBT.—ON AWARD. ~~RESIDENCE~~ AT NISI PRIUS.

said parties, or either of them, requiring the same on or before, &c.: And the said J. in fact further says, that such submission as last aforesaid being so made as aforesaid, the said R. P. and G. L. took upon, &c. &c. and proceeded in the same, and having heard and attended to the allegations of, and for, and on the behalf of the several parties to such reference, they the said R. P. and G. L. as such arbitrators as aforesaid, did afterwards, to wit, on, &c. (being within the time limited for that purpose as aforesaid) at, &c. make and publish their award in writing of and upon the premises so to them referred as last aforesaid under their hands and seals, ready, &c. &c. and by the said last-mentioned award (which the said J. now brings into court here) they the said arbitrators did, amongst other things, award and determine that the said M. should repay to the said J. his executors, or administrators, the sum of forty-five pounds, being the taxed costs of the aforesaid new trial by him paid to her, and that the said M. should also pay to the said J. his costs as plaintiff in the said replevin cause to be taxed by, &c. &c. the said several costs to be paid in, &c. and notice of such taxation should be given or left at the usual place of abode of the said M. as by the said award (relation being thereto had) will more fully appear; and the said J. avers, that the costs of him the said J. as plaintiff in the said replevin cause, and by the said arbitrators awarded, &c. to be taxed by, &c. were after the making of the said award, to wit, on, &c. accordingly taxed, and the same amounted to, &c. and that the said M. had then and there notice of, &c. and of the amount thereof, according to the directions, intent, and meaning of the said award in that behalf: Yet the said J. further says, that the said M. did not (although oft n requested to to do) repay, &c. &c. and also the said costs of him the said J. D. as plaintiff in the said replevin cause, nor hath she as yet paid the same, or any part thereof, but she so to do hath wholly refused and neglected, and hath therein wholly failed and made default, to wit, at, &c. whereby an action, &c. (as before): And whereas the said M. afterwards, to wit, on, &c. at, &c. had and received to the use of the said J. ^{3d Count.} a certain other sum of money, to wit, the further sum of two hundred and fourteen pounds, and thereby then and there became indebted to the said J. in the said last mentioned sum of money to be paid to him the said J. when she the said M. should be thereto afterwards requested; whereby an action hath accrued to the said J. to demand and have of and from the said M. the said last-mentioned sum of money when she the said M. should be thereto afterwards requested: And whereas the said M. afterwards, to wit, on, &c. at, &c. borrowed of the said J. a certain other sum of money, to wit, the sum of two hundred and fourteen pounds of, &c. to be paid to the said J. when she the said M. should be thereto afterwards requested; whereby an action hath accrued to the said J. to demand and have of and from the said M. the said last-mentioned sum of two hundred and fourteen pounds,

DEBT.—ON SPECIALTIES.

residue of the said eight hundred and fifty-six pounds above demanded; yet, &c. V. LAWES.

Trinity Term, 26. Geo. III.

Declaration in
debt against de-
fendant, for
non-payment of
money awarded
by an umpire,
after submission
to arbitration by
rule made at
nisi prius at the
assizes.

LANCASHIRE, to wit. John Whitaker, clerk, complains of John Slater being, &c. debt twenty-one pounds; for that whereas in the term of the Holy Trinity, in the twenty-sixth year of the reign of our lord the now king, a certain action by and between the said J. W. and the said J. S. in which the said J. W. was plaintiff and the said J. S. was defendant, was depending in the court of our said lord the king before the king himself, the said court then and still being held at Westminster, in the county of Middlesex, and put in issue to be tried by a jury of the county of L. at the then next assizes to be held at L. in and for the said county of L.; which said action so depending and put in issue as aforesaid afterwards, at the said assizes holden in and for the said county of L. at the castle of L. in the said county, on, &c. came on to be tried by a jury of the said county, before F. B. esquire, then one of his majesty's justices, assigned to hold pleas before the king himself, and J. H. esquire, one of the justices of his majesty's court of the bench at Westminster aforesaid, the justices assigned to hold those assizes, and thereupon after the jurors of the said jury were then and there in due manner elected, impannelled, and sworn to try the said issue joined between the said parties, and to give a true verdict therein according to the evidence before the trial of the said issue, and before any verdict was had or given in the said action, it was then and there ordered by the said court, by and with the consent of the parties, their counsel and attornies, that the jurors impannelled and sworn in the said jury to try the said issue in the said cause should be withdrawn, and all matters in difference between the said parties should be referred to the award and arbitrament, final end and determination of C. T. and J. P. both of M. in the county of L. merchants, so as they made their award in writing, ready to be delivered to the said parties or either of them requiring the same, on or before the first day of the then next Michaelmas term, and in case they could not agree to make such award, then that the said cause so at issue between the said J. W. and J. S. as aforesaid, and all matters in difference between the said parties should be in like manner referred to the said C. T. and J. P. and such other person as they should nominate and appoint, so that they the said C. T. and J. P. and such other person so to be nominated and appointed, or any two of them, made their award as aforesaid on or before the said first day of the then next Michaelmas term; and by the like assent it was further ordered, that the costs of the said action, and of the arbitration and award should be in the discretion of the said arbitrators, that no bill in equity should be filed by any or either of the said parties against the said arbitrators, or any of them, for any matter relating to their award, to be made pursuant to that rule,

AWARD—UMPIRE—RESIDENCE AT NISI PRIUS.

rule or order so made as aforesaid, and that the same rule or order so made as aforesaid should be made a rule of his majesty's court of king's bench if the court should so please: And whereas the said rule or order so made as aforesaid was afterwards, to wit, in Michaelmas term last, in due manner made a rule of his majesty's court of king's bench, and the time limited for the arbitrators in the said rule or order named to make their award in the said cause, was in the same term enlarged by the said court to the second day of the present Hilary term, as by the said rule and order (reference being thereunto had) will more fully appear: And whereas the said C. T. and J. P. so being such arbitrators as aforesaid, afterwards, and after the making of the said rules and orders, to wit, on, &c. at, &c. did take upon themselves the burthen and execution of the said award, and the said C. T. and J. P. then and there not agreeing in their award, did constitute, nominate, and appoint one J. L. according to the form and effect of the said rule or order so made as aforesaid with them the said C. T. and J. P. for the purposes as in the said order is mentioned: And whereas the said C. T. and J. P. as such arbitrators, and the said J. L. so being nominated and appointed as aforesaid, afterwards, and before the second day of this present Hilary term, to wit, on, &c. at, &c. in, &c. did take upon themselves the burthen of that award, and then and there made and published their award in writing under their hands and seals of and upon the premises, and ready to be delivered of all matters and things so referred to the award, order, final end, and determination of the said C. T. and J. P. as aforesaid; and the said C. T. and J. P. and the said J. L. did, in and by their said award, arbitrate, award, order, judge, and determine of and concerning the premises, amongst other things, in manner following, that is to say, that all differences and disputes between the said J. W. and J. S. touching the matter referred to them, should wholly cease, end, and determine, and that the said J. S. his executors, or administrators, should well and truly pay or cause to be paid unto the said J. W. or to his attorney, executors, or administrators, the sum of twenty-one pounds of good and lawful money of Great Britain, on, &c. then next, between the hours of ten and twelve in the forenoon, at the house or office of J. W. at, &c. in, &c. attorney for the said J. W. in full compensation and satisfaction for all rent owing by the said J. S. to the said J. W. for Monkey-house farm in the said award mentioned, as by the said award (reference being thereunto had) will amongst other things more fully and at large appear; of all which premises he the said J. S. afterwards, to wit, on, &c. at, &c. had notice: And the said J. W. further says, that he the said J. S. did not pay, or cause to be paid to the said J. W. or his attorney the said sum of twenty-one pounds so awarded to be paid as aforesaid, or any part thereof, on the said seventeenth day of, &c. in this award mentioned, and now last past, between the hours of ten and twelve in the forenoon, at the house or office of the said J. W. in the said award mentioned, although he the said J. W. was then and

and there ready to accept the same, and although he the said J. S. was then and there often times requested by the said J. W. to pay the same; but the said J. S. hath hitherto wholly failed, neglected, and refused to pay the same sum of twenty-one pounds, or any part thereof, to the said J. W. contrary to the form and effect of the said award, to wit, at, &c. in, &c.; by reason whereof and by force of the said award, an action hath accrued to the said J. W. to demand and have of and from the said J. S. the said sum of twenty-one pounds above demanded; yet, &c. (Common conclusion in debt.)

Plea to debt on bond, that it was conditioned for the performance of an award (which plea sets out), and that defendant requested plaintiff to perform the same on his part (stating in what instances), and on that condition offered to do on his, but plaintiff refused.

WALMSLEY } AND the said defendant, by G. Parker
at suit of } his attorney, comes and defends the wrong
NEEDHAM. } and injury, when, &c. and prays *oyer* of the
said writing-obligatory, and it is read to him in these words,
to, &c. [here was set out at large the condition of the bond, which
was for the performance of an award] which being read and heard,
he the said defendant says, that said plaintiff *attio non*; because he
says, that the said Henry Norris in the said condition mentioned,
after the making of the said writing-obligatory, to wit, on, &c.
did nominate and appoint one B. L. and E. P. both of Manchester
aforesaid, merchants, to arbitrate, award, order, judge, and
determine of and concerning all matters in the said condition
in that behalf mentioned, which said B. L. and E. P. afterwards,
to wit, on, &c. by their award in writing under the hands and seals
of the said B. L. and E. P. did award, arbitrate, and determine,
that, &c. [here was recited the award which was made for the
settling certain accounts between the said plaintiff and defendant,
and by which it was awarded that the plaintiff should render to the
defendant a just account in writing of all the goods he had sold on
the defendants account, and of all the money he had received or
might receive for the same; that the said plaintiff should pay the
said money to the said defendant, together with an allowance of ten
per cent. per annum for the time he had used it; that the plaintiff
should also deliver to the defendant or his order all the manufac-
tured goods in his hand belonging to the defendant, and should bear
the expence of purchasing and engraving certain copper-plates;
and the defendant should out of the money so to be paid him or
otherwise, pay and allow to the plaintiff a commission of four *per*
cent. on the goods which he had sold on the defendant's account,
and also that defendant should deliver to the plaintiff the before
mentioned copper-plates for his own use, and should pay to the
plaintiff one half of the profit which might have accrued from the
sale of one thousand suits of cloaths printed from the said copper-
plates, which the arbitrators computed at six hundred and twenty-
five pounds; that the cost of the reference should be borne by de-
fendant and plaintiff equally, and that they should execute mutual
and general releases.—N. B. The award was to be carried into
execution on a particular day.] as by the said award more fully
appears,

PERFORMANCE OF AN) AWARD.—DEMURRER to PLEA.

35

appears, which said matters above recited are the whole of the matters of the said award directed to be performed by the said plaintiff and defendant: And the said defendant further saith, that the said plaintiff, before the making of the said writing-obligatory, and before the said first day of July in the said award mentioned, at London, &c. aforesaid, had sold and disposed of divers goods, wares, and merchandizes, for and on account of the said plaintiff, to a great value, to wit, to the value of two hundred pounds, and had received for and on account of the said goods, &c. cash and bills to a large amount, to wit, to the amount of one hundred pounds, to wit, at London, &c. aforesaid: *And the said defendant further says*, that he the said defendant, on the day in the said award in that behalf directed, to wit, on the said first day of July in the said award mentioned, to wit, at London, &c. aforesaid, requested the said plaintiff to pay him the said defendant the said balance of cash and bills received by him the said plaintiff for and on account of goods, &c. sold as aforesaid, and to perform the said award in all things on his part and behalf to be performed, and then and there was ready and willing, and offered to perform the said award in all things directed to be performed by him the said defendant if the said plaintiff would perform the said award in the several matters and things directed to be performed by him the said plaintiff; but the said plaintiff then and there wholly refused to pay to the said defendant the balance of the said cash and bills so received by the said plaintiff as aforesaid, and to perform the said award in the several matters and things directed by the said award to be performed on the part and behalf of the said plaintiff; and this, &c.; wherefore, &c. if, &c.

F. BOWER.

That the said defendant hath not alledged or shewn in or by his the said plea, that he the said defendant did deliver to or to the order of the said plaintiff the said copper-plates in the said award in the said plea of the said defendant mentioned, according to the tenor and effect of the said award in that behalf, nor pleaded or assigned any legal excuse for the non-delivery thereof; and also for that the said defendant hath not alledged or shewn in or by his said plea, that he the said defendant did pay to the said plaintiff the said sum of six hundred and twenty-five pounds in the said award in the said plea of the said defendant mentioned, and thereby awarded to be paid to the said plaintiff as is in the said plea mentioned, or any part thereof, according to the tenor and effect of the said award in that behalf, nor pleaded nor assigned any legal excuse for the non-payment thereof; and for that the said plea is argumentative and attempts to put in issue other matter that is wholly immaterial; and also for that the said plea is in various other respects uncertain, insufficient, and informal, &c.

C. RUNNINGTON.

joinder in demurrer and arguments of the court who gave judgment for defendant.

The defendant joined in demurrer [See the form 1 Rich. Pr. B. R. 218.] and the matter was argued in Easter Term, 19. Geo. 3 by RUNNINGTON for the plaintiff, and BOWER for the defendant; Mr. RUNNINGTON insisted that the plea was bad, as it prevented the plaintiff from shewing to the court in his replication his cause of action arising from the breach of the award by the defendant; and secondly, as it was granted on a supposition which was not well founded, as it could not be justified by any construction of language, *that all the acts required to be done on the part of the plaintiff were to precede the performance of the award on the part of the defendant.*

Mr. BOWER argued in support of the plea, and first, he said that the plaintiff by his demurrer had confessed that he refused to perform the award on his part, and therefore the defendant was justified in the refusal on his part. That if the plaintiff under these circumstances had applied to the court for an attachment against the defendant for the non-performance of the award as a rule of court, it would not have been granted, and therefore he contended that the present action could not be maintained, *for as the court are to grant attachments in all cases where actions may be brought*, it follows that where they cannot grant an attachment no action will lie. Secondly, he adverted to the award itself, and proceeded to shew that it was neither certain nor reasonable, that it did not appear by the award what was the amount of the money which the plaintiff had received, and which he was to pay over to defendant; and that therefore the award was uncertain, and that it was unreasonable that defendant should pay half the profit upon goods which in fact he could not sell; that if the award was bad in part it was bad in the whole, and the defendant must have judgment; and to prove this he cited Fitz. Ab. 44. p. 27. and 2. Saund. 293.

Mr. RUNNINGTON in reply contended that the award was certain to a common intent, and as certain as the arbitrators could make it; but admitting it to be bad in part, yet, to shew an award may be bad in part and good for the residue, he cited 2. Will. 293.

WILLES (Justice) observed that the professed object of the award pointed out in the condition of the bond was the settlement of accounts, which notwithstanding were suffered to remain *in statu quo*; that on the face of the award the balance appeared to be in favour of defendant to a considerable amount, and that therefore sense, reason, and justice directed that such balance should be paid to the defendant previous to the payment awarded to be made by him to the plaintiff.

ASHURST (Justice) spoke to the award only, and said that it was both uncertain and unreasonable; it was uncertain in not ascertaining the balance of the account, which was the object of the reference; and it was unreasonable that such balance should be ascertained by the plaintiff himself; that the award being bad in part was bad in the whole, and therefore he concluded for the defendant.

BULLER (Justice) laid it down as established law that awards must be *certain, mutual, and final*; and though he allowed the principle that awards may be void in part and good for the residue, yet he denied the application of that principle to the present case; "where the submission," continued he, "is of different and independent things, such as an horse and bill of exchange, and the award is good as to one and void in respect of the other, the principle will apply, and the party is in that case left to his own remedy as to the subject of that part of the award which is inconclusive; but in the present case the award is intended to settle a general account between plaintiff and defendant, which is *one entire thing*; and therefore as the award is uncertain, and consequently void in some respects, it must be altogether." He then went into the causes of demurrer, and said that as the plaintiff was to pay for the purchasing and engraving the copper-plates, it was but reasonable he should do so before their delivery; and it was alike reasonable that the manufactured goods, &c. should be delivered to the defendant before the plaintiff received the profits which might accrue from their sale. [Absent Lord Mansfield, chief justice.]

DEBT.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays *oyer* of the said writing-obligatory in the said declaration first-mentioned, and it is read to him, &c. ; he also prays *oyer* of the condition of the said writing-obligatory, and it is read to him in these words : The condition, &c. (for the payment of an annuity) which being read and heard, the said defendant says that *adlio non* ; because he says that the said defendant had paid to the said plaintiff an annuity of pounds free and clear of and from all deductions and abatements, on the day of , on the day of , and on the day of in every year since the making of the said writing-obligatory, according to the tenor and condition of the said writing-obligatory, to wit, at, &c. afore said ; and this, &c. ; wherefore, &c. if the said plaintiff ought to have his afore said action maintained against him as to the said, &c. parcel of the said, &c. by the said plaintiff above demanded ; and the said defendant also prays *oyer* of the said writing-obligatory in the said declaration last-mentioned, and it is read to him, &c. ; he also prays *oyer* of the condition of the said writing-obligatory, and it is read to him in these words, to wit, the condition, &c. (for payment of an annuity) which being read and heard, he the said defendant says *adlio non* ; because he says that, &c. [same as in the other plea, *mutatis mutandis*.] ; and this, &c. ; wherefore, &c. if the said plaintiff ought to have, &c. as to the said pounds, residue of the said pounds above demanded, &c.

(a) See Debt on Annuity Bonds, *post*. but see Index and Practical Directions to this is inserted out of its strict order ; this volume.

And the said plaintiff, as to the said plea of the said defendant by him first above pleaded in bar as to the said pounds, parcel of the said pounds above demanded, says *precludi non* as to the said pounds, parcel, &c. because protesting that the said defendant hath not paid to the said plaintiff the said annuity of pounds, in the condition of the said declaration mentioned, and first-mentioned writing-obligatory mentioned, free and clear from deduction and abatement, on, &c. in every year since the making of the said writing-obligatory, according to the tenor and effect of the said condition of the said writing-obligatory, as the said defendant hath above in pleading alledged in that behalf ; for replication in this behalf the said plaintiff saith, that on, &c. to wit, at, &c. afore said, pounds of lawful money of Great Britain for then elapsed and ended, on the day and year afore said, became due and owing from the said defendant to the said plaintiff on the said writing-obligatory in the said declaration first-mentioned by the condition thereof, and which still remains and is due, owing, in arrear, and unpaid to the said plaintiff, contrary to the tenor, true intent and meaning of the said writing-obligatory in the said declaration first-mentioned by the condition thereof ; and this, &c. ; wherefore, &c. he prays judgment and the said three hundred

DEBT.—ON SPECIALTIES.

dred pounds, parcel, &c. together with his damages on occasion of the detaining thereof, to be adjudged to him, &c. : And the said plaintiff, as to the said plea of the said defendant by him lastly above pleaded in bar as to the said pounds, residue of the said pounds above demanded, say *precludi non*; for replication, &c. [as before]; and this, &c. ; wherefore he prays judgment and the said pounds, residue of, &c. together with his damages by him sustained on occasion of the detaining thereof, to be adjudged to him, &c.

ON BILLS PENAL.

Declaration in debt, on a bill penal jointly and severally made by two obligors, at suit of husband and wife (which wife, whilst she was sole, was surviving obligee) against the executor of one of the obligors.

CORNWALL, to wit. William Mann, late of, &c. fifth man, executor of the last will and testament of John Carn Perrack the elder, deceased, was summoned to answer unto John Harvey and Elizabeth his wife, formerly Elizabeth Over, spinster, of a plea that he render to them forty pounds of lawful, &c. which he unjustly detains from them, &c. ; and thereupon the said plaintiffs, by A. B. their attorney, complain, that whereas one John Carn Perrack the younger, and the said John Carn Perrack the elder, in his the said J. C. P. the elder's lifetime, to wit, on the twenty-sixth day of January, in the year of Our Lord 1746, at the said county, by their certain bill penal then and there made and sealed with their seals, and by them then and there duly delivered as then act and deed, bound themselves, their heirs, executors, and administrators, and each and every of them, jointly and severally, unto one Elizabeth Richards and to the said Elizabeth the now plaintiff, in the lifetime of the said Elizabeth Richards, and whilst the said Elizabeth the now plaintiff was sole, and which said Elizabeth Richards is since dead, and which said Elizabeth Richards the said Elizabeth the now plaintiff hath survived, in the said sum of forty pounds of lawful, &c. to pay or cause to be paid unto the said Elizabeth Richards and Elizabeth the now plaintiff, then Elizabeth Over, their heirs, executors, administrators, or assign, or either of them, the sum of twenty pounds of like lawful moneys of Great Britain, with lawful interest for the same, at or before the twenty-sixth day of January next ensuing the date of the said bill penal, which would be in A. D. 1757; and the said John Harvey and Elizabeth his wife do aver, that the said J. C. P. the younger and the said J. C. P. the elder did not, nor did either of them pay or cause to be paid to the said Elizabeth Richards and Elizabeth the now plaintiff, whilst the said Elizabeth was sole, or to either of them, the said sum of twenty pounds with lawful interest for the same, or any part thereof, at or before the said twenty-sixth of January, A. D. 1747, or at any other time afterwards, but therein wholly failed and made default; whereby an action hath accrued unto the said Elizabeth Richards

BILLS PENAL.

Richards and Elizabeth the now plaintiff, in the lifetime of the said Elizabeth Richards, and whilst the said Elizabeth the now plaintiff was sole, to demand and have of and from the said J. C. P. the elder, in his lifetime, the said forty pounds above demanded: Yet the said J. C. P. the elder, in his lifetime, or the said defendant since his death, have not, nor hath either of them yet paid the aforesaid sum of forty pounds, or any part thereof, to the said Eliz. Richards and Elizabeth the now plaintiff, in the lifetime of the said Eliz. Richards, and whilst the said Elizabeth the now plaintiff was sole, or to the said Elizabeth the now plaintiff while she was sole, after the death of the said Elizabeth Richards, or to the said John Harvey and Elizabeth the now plaintiff, after the marriage celebrated between them, or to any of them, although often requested, but have hitherto wholly refused so to do, and the said defendant still refuses to pay the same to the said John Harvey and Elizabeth his wife, to the said J. H. and Elizabeth his wife their damage of ten pounds; and therefore they bring their suit, &c. and they bring into court here the bill penal, which gives sufficient evidence of the debt aforesaid, in form aforesaid, the date whereof is the same day and year above said, &c.

DEVONSHIRE, to wit. Nicholas Palacer complains of Robert Harris, being, &c. of a plea that he render to him ten pounds of lawful, &c. which he owes to and unjustly detains from him, &c.; for that whereas the said defendant, on the sixteenth of May, A. D. 1739, at King's Stinton, in the said county of Devon, by his certain writing-obligatory, sealed with his seal and now shewn to the court here, the date whereof is the same day and year aforesaid, bound himself, his heirs, executors, and administrators, unto the said plaintiff in the sum of ten pounds of lawful, &c. to pay or cause to be paid unto the said plaintiff, his executors, administrators, or assigns, the full sum of five pounds of like lawful, &c. with lawful interest for the same, on the fifteenth of May after the making the said bill-obligatory: And the said plaintiff in fact saith, that the said defendant did not pay or cause to be paid to the said plaintiff the said sum of five pounds with lawful interest for the same, on the said fifteenth of May next after the making of the said bill obligatory, or at any other time whatsoever, but therein wholly failed, wherefore an action hath accrued to the said plaintiff to demand and have of the said defendant the said ten pounds above demanded: Yet the said defendant, although often requested, hath not yet paid the said ten pounds or any part thereof to the said plaintiff, but he to pay the same hath hitherto wholly refused and still refuses, to the said plaintiff his damage of five pounds; and therefore he brings his suit, &c. Pledges, &c.

Declaration, the debt, on bill penal at suit of obligee against obligor.

Drawn by MR. WARREN.

CORN-

DEBT.—ON SPECIALTIES.—BILL PENAL.—BOND.

Michaelmas Term, 26. Geo. III.

Declaration in B.
R. on a bill pen-
al, stating the
condition. De-
fendant in the
custody of the
sheriff.

CORNWALL, to wit. Margery Bulteel, by A. Mason and B. Carpenter her attornies, complains of William Richards and Thomas Toffer being in the custody of the sheriff of Cornwall, by virtue of a certain writ of our lord the king commonly called a *latuit*, issued out of the court of our said lord the king before the king himself here, at the suit of the said Margery against the said William and Thomas, of a plea that they render to her the said Margery the sum of eighty pounds of lawful money of Great Britain, which they owe to and unjustly detain from her; for that whereas the said William and Thomas, on the eleventh day of August, in the year of Our Lord 1775, to wit, at Turo, in the county of Cornwall, by their certain bill obligatory, sealed with their respective seals, and now shewn to the court of our said lord the king before the king himself here, the date is the day and year above said, bound themselves to the said Margery in the sum of eighty pounds of lawful money of Great Britain, to pay or cause to be paid to her the said Margery the full sum of forty pounds of like lawful money, with lawful interest, at or on the eleventh day of February then next (that is to say, at or on the eleventh day of February, in the year of Our Lord 1776): And the said Margery in fact further saith, that the said William and Thomas did not, nor did either of them pay or cause to be paid to the said Margery the said sum of forty pounds with lawful interest, or any part thereof, at or on the said eleventh day of February in the year last aforesaid, according to the form and effect of the said bill; whereby an action hath accrued to the said Margery to demand and have of and from the said William and Thomas the said sum of eighty pounds above demanded; yet the said William and Thomas, although often requested, have not, nor hath either of them paid the said sum of eighty pounds above demanded, or any part thereof, to the said Margery, they the said William and Thomas have, and each of them hath hitherto wholly refused, and still do refuse, to the damage of the said Margery of twenty pounds; and therefore she brings suit, &c.

ON BOND.

Declaration on
a bond, by an
executor of an
executor against
an executor.

ESSEX, to wit. J. R. late of, &c. executor of the last will and testament of E. F. was summoned to answer E. B. executor of the last will and testament of J. B. deceased, who in his lifetime and at the time of his decease was executor of the last will and testament of E. B. deceased, in a plea of trespass that he render to the said plaintiff, as such executor aforesaid, one hundred and fifty pounds of lawful money of Great Britain, which he unjustly detains from him, &c. and thereupon, &c.; for that whereas the said

By EXECUTOR OF EXECUTOR AGAINST EXECUTOR,

said E. F. in her lifetime and also in the lifetime of the said E. W. to wit, on, &c. at, &c. by her certain writing-obligatory, sealed with her seal, and bearing date the same day and year aforesaid, acknowledged to be and become held and firmly bound to the said E. W. in the sum of one hundred and twenty-five pounds of lawful, &c. to be paid to the said E. W. his executors, or administrators, when the the said E. F. should be thereto afterwards requested, yet neither the said E. F. in her lifetime, nor the said defendant, executors as aforesaid, since her decease, although often requested, have not, nor hath either of them paid the said sum of one hundred and twenty pounds, or any part thereof, either to the said E. B. in his lifetime, or to the said J. B. or the said plaintiff since his decease; but she the said E. F. in her lifetime wholly refused, and the said defendant, executor as aforesaid, since her death hath wholly refused to pay the same, and he still refuses to pay the same, or any part thereof, to the said plaintiff, executor as aforesaid, to the damage of the said plaintiff as such executor as aforesaid of two hundred pounds, and therefore he brings his suit, &c. and the said plaintiff brings into court here the aforesaid writing-obligatory, whereby the debt aforesaid is testified, and also the letters testamentary as well of the said E. B. as of the said J. B. deceased, which sufficiently testify to the court here that the said J. B. in his lifetime, and at the time of his decease was executor of the last will and testament of the said E. B. deceased, and that the said plaintiff now is executor of the last will and testament as well of the said E. B. as of the said J. B. and hath administration thereof.

V. LAWES.

HAMPSHIRE, to wit. Be it remembered that heretofore, that is to say, in the twenty-fifth year of the reign of our sovereign lord the king, at Westminster, came J. B. and H. S. executors of the last will and testament of E. P. deceased, by A. B. their attorney, and brought into the court of our said lord the king then their certain bill against T. P. being, &c. of a plea of a debt, and there are pledges for the prosecution, to wit, J. D. and R. R. which said bill follows in these words, to wit, Hampshire, to wit, J. B. and H. S. executors of the last will and testament of E. P. deceased, complain of T. P. being, &c. of a plea that he render to the said J. and H. four hundred pounds of lawful money of Great Britain, which he unjustly detains from them, &c.; for this, to wit, the said Thomas on the eighteenth day of August, A. D. 1779. at W. in the said county of H. by his certain writing-obligatory sealed with his seal, and to the court of our said lord the king now here shewn, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound to the said E. P. deceased, in his lifetime, in the sum of four hundred pounds, to be paid to the said E. P. whenever afterwards he should be required; nevertheless the said T. P. although often requested, &c. did not pay the said four hundred pounds, or any part thereof to the said E. P. deceased, in his lifetime, nor hath he

Executors
obliged
obliged

DEBT.—ON SPECIALTIES.—BILL PENAL.—BOND.

Michaelmas Term, 26. Geo. III.

Declaration in B.
R. on a bill pen-
nal, stating the
condition. De-
fendant in the
custody of the
sheriff.

CORNWALL, to wit. Margery Bulteel, by A. Mafon and B. Carpenter her attornies, complains of William Richards and Thomas Toffer being in the custody of the sheriff of Cornwall, by virtue of a certain writ of our lord the king commonly called a *latuit*, issued out of the court of our said lord the king before the king himself here, at the suit of the said Margery against the said William and Thomas, of a plea that they render to her the said Margery the sum of eighty pounds of lawful money of Great Britain, which they owe to and unjustly detain from her; for that whereas the said William and Thomas, on the eleventh day of August, in the year of Our Lord 1775, to wit, at Truro, in the county of Cornwall, by their certain bill obligatory, sealed with their respective seals, and now shewn to the court of our said lord the king before the king himself here, the date is the day and year above said, bound themselves to the said Margery in the sum of eighty pounds of lawful money of Great Britain, to pay or cause to be paid to her the said Margery the full sum of forty pounds of like lawful money, with lawful interest, at or on the eleventh day of February then next (that is to say, at or on the eleventh day of February, in the year of Our Lord 1776): And the said Margery in fact further saith, that the said William and Thomas did not, nor did either of them pay or cause to be paid to the said Margery the said sum of forty pounds with lawful interest, or any part thereof, at or on the said eleventh day of February in the year last aforesaid, according to the form and effect of the said bill; whereby an action hath accrued to the said Margery to demand and have of and from the said William and Thomas the said sum of eighty pounds above demanded; yet the said William and Thomas, although often requested, have not, nor hath either of them paid the said sum of eighty pounds above demanded, or any part thereof, to the said Margery, they the said William and Thomas have, and each of them hath hitherto wholly refused, and still do refuse, to the damage of the said Margery of twenty pounds; and therefore she brings suit, &c.

ON BOND.

Declaration on
a bond, by an
executor of an
executor against
an executor.

ESSEX, to wit. J. R. late of, &c. executor of the last will and testament of E. F. was summoned to answer E. B. executor of the last will and testament of J. B. deceased, who in his lifetime and at the time of his decease was executor of the last will and testament of E. B. deceased, in a plea of trespass that he render to the said plaintiff, as such executor aforesaid, one hundred and fifty pounds of lawful money of Great Britain, which he unjustly detains from him, &c. and thereupon, &c.; for that whereas the said

BY EXECUTOR OF EXECUTOR AGAINST EXECUTOR.

said E. F. in her lifetime and also in the lifetime of the said E. W. to wit, on, &c. at, &c. by her certain writing-obligatory, sealed with her seal, and bearing date the same day and year aforesaid, acknowledged to be and become held and firmly bound to the said E. W. in the sum of one hundred and twenty-five pounds of lawful, &c. to be paid to the said E. W. his executors, or administrators, when she the said E. F. should be thereto afterwards requested, yet neither the said E. F. in her lifetime, nor the said defendant, executors as aforesaid, since her decease, although often requested, have not, nor hath either of them paid the said sum of one hundred and twenty pounds, or any part thereof, either to the said E. B. in his lifetime, or to the said J. B. or the said plaintiff since his decease; but she the said E. F. in her lifetime wholly refused, and the said defendant, executor as aforesaid, since her death hath wholly refused to pay the same, and he still refuses to pay the same, or any part thereof, to the said plaintiff, executor as aforesaid, to the damage of the said plaintiff as such executor as aforesaid of two hundred pounds, and therefore he brings his suit, &c. and the said plaintiff brings into court here the aforesaid writing-obligatory, whereby the debt aforesaid is testified, and also the letters testamentary as well of the said E. B. as of the said J. B. deceased, which sufficiently testify to the court here that the said J. B. in his lifetime, and at the time of his decease was executor of the last will and testament of the said E. B. deceased, and that the said plaintiff now is executor of the last will and testament as well of the said E. B. as of the said J. B. and hath administration thereof.

V. LAWES.

HAMPSHIRE, to wit. Be it remembered that heretofore, that is to say, in the twenty-fifth year of the reign of our sovereign lord the king, at Westminster, came J. B. and H. S. executors of the last will and testament of E. P. deceased, by A. B. their attorney, and brought into the court of our said lord the king then their certain bill against T. P. being, &c. of a plea of a debt, and there are pledges for the prosecution, to wit, J. D. and R. R. which said bill follows in these words, to wit, Hampshire, to wit, J. B. and H. S. executors of the last will and testament of E. P. deceased, complain of T. P. being, &c. of a plea that he render to the said J. and H. four hundred pounds of lawful money of Great Britain, which he unjustly detains from them, &c.; for this, to wit, the said Thomas on the eighteenth day of August, A. D. 1779. at W. in the said county of H. by his certain writing-obligatory sealed with his seal, and to the court of our said lord the king now here shewn, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound to the said E. P. deceased, in his lifetime, in the sum of four hundred pounds, to be paid to the said E. P. whenever afterwards he should be required; nevertheless the said T. P. although often requested, &c. did not pay the said four hundred pounds, or any part thereof to the said E. P. deceased, in his lifetime, nor hath he

Executor
obliged
obliged

(a) PLEA TO DEBT ON BOND FOR PERFORMANCE OF

the said T. paid the same, or any part thereof, to the said J. and H. executors as aforesaid, since the decease of the said E. but to pay the same, or any part thereof, to the said E. P. deceased, in his lifetime, or to the said J. and H. executors as aforesaid since the decease of the said E. the said T. hath hitherto wholly refused, and still doth refuse to pay the same to the said J. and H. to the damage of the said J. and H. executors as aforesaid, of twenty pounds, and thereupon they bring suit, &c.; and the said J. and H. bring here into court the letters testamentary of the said E. P. deceased, by which it sufficiently appears to the court here that the said J. and H. are executors of the last will and testament of the said E. P. deceased, and have the execution thereof, &c.

Plea to last declaration, over of bond and condition (which was for the good behaviour of A. B. whom plaintiff had taken as his clerk) that A. B. bargained the conditions.

And now at this day, that is to say, on, &c. in the same term, until which day the said T. had leave to impugn to the said bill, then to answer the same, &c. as well the said J. and H. by their said attorney, as the said T. by T. H. his attorney, do come before our said lord the king, at Westminster, and the said T. defends the wrong and injury, when, &c. and prays over of the said writing-obligatory, and it is read to him in these words, to wit, know all men, &c. [here copy the bond, and then proceed as follows] he also craves over of the condition of the said writing obligatory, and it is read to him in these words, &c.; and whereas the above-named E. P. hath taken and employed J. H. of the city of W. in the county aforesaid, draper, as a servant and in the nature of a clerk to him the said E. P. and likewise as his book-keeper and accountant, and in such other business as he the said E. P. shall think fit to employ him about; now the condition of the above written obligation is such, that if the said J. H. shall and do from time to time make and give unto the said E. P. his executors, and administrators, a just and true account in writing, and discharge himself of, for, and from, and likewise pay and deliver unto the said E. P. his executors, or administrators, all such sum or sums of money, bills, notes, goods, effects, and things whatsoever, and of what nature soever, which he the said J. H. shall from time to time receive, discharge, or which shall come into his hands, charge, or custody of or belonging to the said E. P. his executors, or administrators, or to any other person or persons wherewith he or they shall or may be charged or chargeable, or otherwise in any other way or manner howsoever, or if the said J. H. his executors, or administrators, do and shall make and give, or cause to be given unto the said E. P. his executors, administrators, or assigns, full satisfaction and recompence in lawful money of Great Britain, of and for all such monies, bills, notes, goods, effects, and things of or belonging to the said E. P. his executors, or administrators, or any other person or persons wherewith he or they may be charged or chargeable as aforesaid, which upon making up any account or accounts, or otherwise at any time or times to have been received or discharged by, or come to the

(a) See Pleas to Debt on Indemnity Bonds and Pleas, &c. in Debt, &c. *post*.

CONDITIONS, (GOOD BEHAVIOUR, &c.) REPLICATION.

345

hands, charge, or custody of the said J. H. and which he shall not duly account for, pay, deliver, or discharge himself from the said E. P. his executors, administrators, or assigns as aforesaid, or which shall be found, confessed, or proved to be embezzled, mispent, or otherwise made away, or unjustly detained by the said Jonathan Hampton, or by any other person or persons by or through his means, privity, or procurement, saving all accidental losses by casual fire, or robbery in the conveyance of the said money, bills, notes, goods, effects, or other things as aforesaid, it being the intention of the parties hereto, that the said obligation shall have no effect further than to the acts and deeds, conduct and behaviour of the said J. H. in the premises, then this obligation to be void and of no effect, or otherwise to stand and remain in full force, power, and virtue, which being read and heard, the said T. P. saith, that the said J. B. and H. S. the said executors of the said E. P. ought not to have or maintain their said action thereof against him, because he saith, that the said J. from and after the making of the said writing-obligatory until the death of the said E. P. was employed by the said E. P. as a servant, and in the nature of a clerk to him the said P. and likewise as his book-keeper and accountant, and in such other business as the said E. P. thought fit to employ him about, to wit, at W. aforesaid, and the said T. says, that he the said J. hath from time to time made and given unto the said E. P. in his lifetime, and to the said J. and H. his said executors after his death, a just and true account in writing, and hath discharged himself of, for, and from, and hath likewise paid and delivered unto the said Edward in his lifetime, and to the said executors since his death, all sum or sums of money, bills, notes, goods, effects, and things whatsoever, he the said Jonathan did from time to time receive, discharge, or which did come to his hands, charge, or custody of or belonging to the said E. P. or to the said executors of the said E. or which his executors, should or might, or shall or may be charged or chargeable, or otherwise in any other way or manner howsoever, according to the form and effect of the said condition, to wit, at W. aforesaid, in the county aforesaid, and this he the said T. is ready to verify; wherefore he prays judgment if they the said J. and H. ought to have their aforesaid action against him, &c.

GEORGE WOOD.

And the said J. B. and H. S. as to the said plea of the said T. P. by him above pleaded in bar say, that they by reason of any thing in that plea alledged ought not to be barred from having and maintaining their aforesaid action thereof against him, because they say, that the said E. P. in his lifetime, to wit, on, &c. duly made his last will and testament in writing, and thereby devised and bequeathed to the said J. and H. their heirs, executors, administrators, or assigns, divers real estates of him the said E. P. and also the residue of his personal estate, after and subject to the payment of certain legacies and charges in the said will mentioned, upon trust, amongst other things, that they should carry on the coal and

culm

Replication,
that plaintiff
testator devised
estates to plain-
tiffs upon trust
that they should
carry on a trade
for the benefit
of testator's fa-
mily. Branch
that A. B. in a
condition men-
tioned, received
money, and
did not account
&c.

REPLICATION TO PLEA TO DEBT ON BOND FOR

culm trade, and the dealings in salt, and all other the trades and business as might appear to them beneficial or advantageous to the family of the said E. P. and upon such other trusts as in the said will are mentioned and expressed, and the said T. P. afterwards, to wit, on, &c. died without altering or revoking his said will, and the said J. and H. afterwards, to wit, on, &c. duly proved the said will, and took upon themselves the burthen of the execution of the same; and in pursuance of the said will and of the trusts reposed in them as aforesaid, continually from the death of the said E. P. hitherto have carried on the trades, dealings, and business in the said will mentioned, and therein directed to be carried on by them as aforesaid, upon the trusts aforesaid: And the said J. and H. further say, that the said J. H. in the condition of the said writing-obligatory mentioned at the time of the making of the said writing-obligatory, and continually from thence until and at the time of the death of the said Edward P. was employed as a servant, and in the nature of a clerk to him the said E. P. and as his book-keeper and accountant, and in such other business as the said E. P. thought fit to employ him about, to wit, at, &c. and that the said J. H. upon the death of the said Edward, and from that time until and upon and after the thirty-first day of July, A. D. 1784, continued in the service of the said J. and H. executors as aforesaid, and during all that time was employed by them as a servant, and in the nature of a clerk, and as their book-keeper and accountant, and in the said trades, dealings, and businesses so carried on by them in pursuance of the said will of the said E. as aforesaid, and in such other business as the said J. and H. thought fit to employ him about concerning the said trades, dealings, and businesses so carried on by them in pursuance of the said will as aforesaid, to wit, at W. aforesaid, and was not from the time of the making the said writing-obligatory, until after the said thirty-first day of July, and after the breach of the said condition of the writing-obligatory herein after mentioned, ever dismissed or discharged from his said service and employment: And the said J. and H. further say, that after the death of the said E. P. and whilst the said J. so continued in the said service and employment of the said J. and H. as aforesaid to wit, on, &c. a large sum of money, to wit, the sum of five hundred and two pounds eight shillings and eightpence of and belonging to the said J. and H. as executors as aforesaid, being the balance of an account then and there stated and settled between the said J. and H. as executors as aforesaid, and the said J. H. of and concerning divers sums of money of and belonging to the said J. and H. as executors as aforesaid, and the said J. H. of and concerning divers sums of money of and belonging to the said J. and H. as executors as aforesaid, before that time received by the said Jonathan as such servant to them as aforesaid for their use, had come into and was then in the charge of the said Jonathan as such servant of the said J. and H. as aforesaid, which said sum of money he the said J. afterwards, to wit, on, &c. was requested by the said J. and H. to pay to them the said J. and H. and although the
sum

PERFORMANCE OF CONDITIONS.—REJOINDER.

said sum of money, or any part thereof, was not lost by casual fire or robbery, yet the said Jonathan did not, when he was so requested, pay or deliver to the said J. and H. executors as aforesaid, or either of them, the said sum of money, or any part thereof, nor hath he at any time or times hitherto paid or delivered the said sum of money, or any part thereof, to the said J. and H. or to either of them, or made any satisfaction or recompence for the same, but to pay or deliver the same, or any part thereof, to the said J. and H. executors as aforesaid, he the said Jonathan hath hitherto altogether neglected and refused, and still refuses, contrary to the form and effect of the said condition of the said writing obligatory, and this the said J. and H. are ready to verify; wherefore they pray judgment and their said debt, with their damages on occasion of the detaining of that debt to be adjudged to them, &c.

A. CHAMBRE.

And the said T. P. as to the said plea of the said J. and H. above by way of reply, says, that the said J. and H. ought not by reason of any thing therein contained to have or maintain their said action thereof against him; because protesting that the said plea so pleaded by way of reply, and the matters therein contained are not sufficient in law for the said J. and H. to maintain their said action against the said T. to which said plea in manner and form aforesaid pleaded, the said T. has no need, nor is he bound by the law of the land in any manner to answer the same; for rejoinder nevertheless in this behalf, the said T. says, that after the death of the said Edward, and after the said J. and H. had proved the said will, and taken upon themselves the burthen of the execution of the same, to wit, on, &c. the said Jonathan and the said J. and H. accounted together, and came to a just and true account in writing of all and every sum and sums of money which the said Jonathan had theretofore received, discharged, or which had come to his hands, charge, or custody of or belonging to the said Edward, or his executors, or to any other person or persons where-with he or they could or might be charged or chargeable, or otherwise in any other way or manner; and upon such accounts the said Jonathan was then and there found to be in arrear to the said J. and H. as executors as aforesaid, in the sum of three hundred and twenty-two pounds and one halfpenny and no more, and which said sum of three hundred and twenty-two pounds and one halfpenny the said Jonathan then and there paid and discharged to the said J. and H.: And the said T. further says, that after the death of the said Edward, and after the said J. and H. had proved the said will, and taken upon themselves the burthen of the execution of the same, to wit, on, &c. a new agreement was made between the said J. and H. and the said Jonathan; that the said Jonathan should serve the said J. and H. as their servant, and in the nature of a clerk, and as their book-keeper and accountant in the said trades and business by them intended to be carried on, in pursuance of the said will and the trusts reposed in them

as

DEBT.—DEMURRER to REJOINDER.

as aforesaid, and that he should likewise buy and sell the different commodities to be bought and sold in the said trades and business, and pay the servants in the said trades and businesses their respective wages, and which before that time the said Jonathan had not been used and accustomed to do, and that they should pay to the said Jonathan a greater salary by the year than the said E. P. in his lifetime, had been paid to the said Jonathan, that is to say, twenty pounds a year more than the said E. P. had in his lifetime paid to the said Jonathan: And the said E. P. further says, that in pursuance of such new agreement the said Jonathan was employed as aforesaid by the said J. and H. in the said trades and business by them carried on in pursuance of the said will and the trusts reposed in them as aforesaid until, at, and after the said Jonathan's receipt of the said sum of five hundred and two pounds eight shillings and eightpence in the said replication mentioned, was and is money which accrued to the said J. and H. after the death of the said Edward in their said trades and business by them carried on in pursuance of the said will and of the trusts reposed in them aforesaid, and received by the said Jonathan after the settlement of the said account with the said J. and H. as executors as aforesaid, by virtue of and in the said employment of the said Jonathan under the said new agreement with the said J. and H. as aforesaid, and not otherwise, and thus he is ready to verify; wherefore he prays judgment if the said J. and H. ought to have or maintain their aforesaid action thereon against him, &c.

GEORGE WOOD.

Demurrer.

And the said J. and H. as to the said plea of the said T. above pleaded by way of rejoinder to the said plea of the said J. and H. of them above pleaded by way of reply, says, that that plea pleaded by way of rejoinder, and the matters therein contained, are not sufficient in law to bar the said J. and H. from having and maintaining their said action thereof against him, to which said plea so pleaded by way of rejoinder in manner and form as the same is above pleaded, they the said J. and H. have no occasion, neither are they bound by the law of the land to answer; and thus they are ready to verify; wherefore for want of a sufficient rejoinder in this behalf they the said J. and H. pray judgment and their debt, together with their damages on occasion of the premises to be adjudged to them, &c.

A. CHAMBER.

Joinder in demurrer.

And the said T. says, that the said plea by him the said T. in manner and form above pleaded by way of rejoinder, and the matters therein contained, are good and sufficient in law to bar the said J. and H. from having and maintaining their aforesaid action thereof against him the said T.; which said plea so pleaded by way of rejoinder, and the matters therein contained, the said T. is ready to verify and prove as the court shall award; and because the said J. and H. have not answered the said plea so pleaded by way of rejoinder, nor in any manner denied the same, the said T.

prays

DEBT.—ON BOND—AGAINST HEIRS AND DEVISEES.

prays judgment, and that the said J. and H. may be barred from having and maintaining their aforesaid action against him.

Geo. Wood.

But because the court of the lord the king now here is not yet advised what judgment to give of and concerning the premises, a day is therefore given to the parties aforesaid to come before our lord the king at Westminster, on next after to hear judgment thereon, for that the court of the said lord the king now here is not advised thereof.

Hilary Term, 14. Geo. III.

BUCKINGHAMSHIRE, to wit. Mary Binfield, late of Iver, otherwise Ever, in the said county of B. spinster, daughter and heir at law and also devisee of divers lands and tenements of John Binfield, late of Iver, otherwise Ever aforesaid, miller, deceased, by his last will and testament, was summoned to answer Thomas Miller, executor of the last will and testament of Thomas Hill the son, who was the surviving executor of the last will and testament of Rebecca Hill, who was the relict and executrix of Thomas Hill the father, deceased, and which said Thomas Miller is also administrator of the goods and chattels, rights and credits which were of the said Thomas Hill the father, unadministered by the said R. H. with the will of the said Thomas Hill the father annexed; of a plea that she render unto the said Thomas Miller two hundred and eight pounds of lawful money of Great Britain which she unjustly detains from him; and whereupon the said T. M. by Charles Morgan his attorney, complains, for that whereas the said J. B. in his lifetime, to wit, on the twenty-sixth day of September, in the year of Our Lord 1748, at Aylesbury, in the said county of B. by a certain writing-obligatory, sealed with his seal, and to the court of our said lord the king, before the king himself, now here shewn, the due whereof is the same day and year aforesaid, became held and firmly bound to the said T. H. the father, in the said two hundred and eight pounds of lawful money of Great Britain, to be paid unto the said Thomas Hill the father, when the said John B. should be thereunto afterwards requested, to which said payment well and truly to be made he the said J. B. bound himself and his heirs firmly by the said writing-obligatory: Yet the said John B. in his lifetime, and the said Mary, since his death, although often requested, have not nor hath either of them yet paid the said two hundred and eight pounds, or any part thereof, to the said T. H. the father in his lifetime, or to the said R. H. in her lifetime, from the death of the said T. H. the father, or to the said T. H. the son, or any other person after the respective deaths of the said T. H. the father, and Rebecca Hill; or to the said T. M. since the death of the said T. H. the son, or to any of them (to which the said Thomas Miller, administrator of all and singular the goods and chattels, rights and credits of the said T. H. the father, at the time of his

Declaration
executor of
surviving
cutor of the
currix, who
also adminis-
trix cum
mento annex
obligee, ag
heir at law
obligor, on
bond.

DEBT.—AGAINST (BARON AND FEME) EXECUTRIX, &c.

death, unadministered by the said R. and T. H. the son, with the will of the said T. H. the father annexed, after the death of the said T. H. the father, and also of T. H. the son, to wit, on the twenty-sixth day of November, in the year of Our Lord 1768, by Frederick by Divine Providence archbishop of Canterbury, primate of all England, and metropolitan, was in due manner granted, to wit, at Aylesbury aforesaid, in the county aforesaid), but to pay the same to the said T. H. the father in his lifetime, or to the said R. H. in her lifetime, since the death of the said T. H. the father, or to the said T. H. the son, since the respective deaths of the said T. H. the father, and R. H. or to the said T. M. since the respective deaths of T. H. R. H. and T. H. the son, the said J. B. in his lifetime, and the said M. since the death of the said J. B. have and each of them hath hitherto altogether refused, and the said M. still doth refuse to pay the same to the said T. M. to the damage of the said T. M. of twenty pounds, and therefore he brings suit, &c.; and the said T. M. now brings here into court the letters of administration of the said archbishop, which sufficiently prove to the court here the granting of the administration aforesaid, the date whereof is the same day and year in that behalf aforesaid; and also the several letters testamentary of the said T. H. the father, R. H. and T. H. the son.

W. BALDWIN.

Declaration on a
bond against
husband and
wife, the wife
being executrix
of obligor but late
husband.

That whereas the said A. D. in his lifetime, to wit, on, &c. at, &c. by his certain written obligatory, sealed with his seal, became held and firmly bound unto the said plaintiff in the sum of two hundred and eighty pounds, to be paid to the said plaintiff when the said obligor should be called to answer and acquit himself of the said A. D. in his lifetime, and the said J. after the death of the said A. D. and whilst she was living, and before her intermarriage with the said H. A. and the said H. A. and J. his wife, after the marriage celebrated between them, although often requested, have not, nor have any, nor hath either of them as yet paid the said two hundred and eighty pounds, or any part thereof, to the said plaintiff, but they, or any, or either of them to pay the same, or any part thereof, to the said plaintiff, have and each of them hath hitherto wholly refused, and the said H. and J. his wife executrixes selected, find refuse to do; wherefore the said plaintiff saith he is injured, and hath sustained damage to the value of ten pounds, and therefore he brings his suit, &c.; and he brings into court here the writing-obligatory, which gives sufficient evidence of the debt aforesaid in form aforesaid, the date whereof is the same day and year in that behalf mentioned.

J. MORGAN.

Declaration in
debt, on bond
by husband and
wife and A. B. who

MIDDLESEX, to wit. J. S. and E. his wife, and Jane Butler, which said E. and J. B. are executrixes of the last will of the said A. B. who (the wife and A. B.) were executrixes of executor of obligee against obligor.

and

By (BARON & FEME) EXECUTRIX--ADMINISTRATRIX, &c.

and testament of S. P. deceased, who in his lifetime, and at the time of his death was executor of the last will and testament of T. R. deceased, complain of J. W. being, &c. in a plea that he render to them, &c. sixty pounds which he unjustly detains from them, &c.; for that whereas the said defendant, in the lifetime of the said T. R. to wit, on, &c. at, &c. by his certain writing-obligatory, sealed with his seal, bearing date the day and year aforesaid, and to the court of our lord the king now here shewn, became held and firmly bound unto the said T. R. in the said sum of sixty pounds above demanded, to be paid to the said T. R. his executors or administrators, when he the said defendant should be thereto afterwards requested: Yet the said defendant, although often requested, hath not as yet paid the said sum of sixty pounds in the said writing-obligatory mentioned, and above demanded, or any part thereof, either to the said T. R. in his lifetime, or to the said J. P. or the said plaintiffs, or any or either of them, since the death of the said T. R. but he to pay the same hath hitherto wholly refused and still refuses. Damages, &c. And they also bring into court here, as well the letters testamentary of the said T. R. deceased, as the letters testamentary of the said T. P. deceased, whereby it appears to the said court here that the said J. P. in his lifetime, and at the time of his death was executor of the last will and testament of the said T. R. deceased, and had administration thereof, and that the said E. and J. B. are executrixes of the last will and testament of the said J. P. and have administration thereof, together with administration of the last will and testament of the said T. R.

V. LAWES.

STAFFORDSHIRE, to wit. Sarah Badely, administratrix with the will annexed, of all and singular the goods and chattels, rights and credits, which were of Josiah Badely her late husband, deceased, complains of Ellen Hill, executrix of the last will and testament of Thomas Hill her late husband, deceased, being in the custody of, &c. in a plea, &c.; for that whereas the said Thomas Hill, in his lifetime, and in the lifetime of the said Josiah Badely, to wit, on, &c. at, &c. by his certain writing-obligatory, sealed with his seal, and now shewn to the court here, the date whereof is the day and year aforesaid, became held and firmly bound to the said J. B. in sixty pounds of law ful, &c. to be paid to the said J. B. or his certain attorney, executors, or administrators, when he the said Thomas should be thereto afterwards requested: Yet the said plaintiff (to whom administration with the will annexed of all and singular the goods and chattels, rights and credits, which were of the said J. B. at the time of his death, was by A. B. by Divine Providence bishop of C. after the death of the said J. B. to wit, on, &c. at, &c. in due form of law granted) in fact saith, that neither the said T. H. in his lifetime, nor the said defendant, executrix as aforesaid, since his death, al-

Declaration in debt on bond, at suit of administratrix, cum testamento annexo of obligee against the executrix de son test of obligor.

DEBT,—ON BOND (BY EXECUTOR OF) EXECUTOR

though often requested, have or hath paid the said sixty pounds, or any part thereof, either to the said J. B. in her lifetime, or to the said plaintiff, administratrix as aforesaid, since his death, but they or either of them to pay the same, or any part thereof, have always refused so to do, and the said defendant, executrix as aforesaid, still refuses to pay the same, or any part thereof, to the said plaintiff, administratrix as aforesaid, her damage of ten pounds, and therefore she brings her suit; and she also brings into court the letters of administration of the aforesaid bishop, bearing date the day and year in that behalf above-mentioned, whereby the grant of the administration aforesaid to her the said plaintiff is sufficiently evinced and proved to the court here, &c.

V. LAWES.

If defendant is executrix *de son tort*, she must be named executrix generally, 5 Co. a. 31.

Hilary Term, 17. Geo. III.

Declaration in
debt on bond by
an executor of
an executor of
the obligee, a-
gainst the son
and heir of obli-
gor.

LEICESTERSHIRE, to wit. Charles Dickenson, late of, &c. clerk, son and heir of John Dickenson his late father, deceased, was summoned to answer to John Bakewell, gentleman, executor of the last will and testament of James Good, deceased, who was executor of the last will and testament of John Farmer deceased, of a plea that he render to him two hundred pounds, which he unjustly detains from him, &c.; and thereupon the said J. B. by O. P. his attorney, says, that whereas the said J. D. whose heir the said C. D. is in his lifetime, to wit, on, &c. at, &c. by his certain writing-obligatory, sealed with his seal, became bound to the said John Farmer in his lifetime in the said two hundred pounds of good and lawful money of Great Britain, to be paid to the said J. F. his executors, or administrators, when he should be thereunto requested, to which payment well and truly to be made the said J. D. bound himself, his heirs, executors, and administrators, by the said writing-obligatory; nevertheless the said J. D. in his lifetime, or the said C. D. since the death of the said J. D. although often requested, have not, nor hath either of them rendered the said two hundred pounds, or any part thereof, to the said J. F. in his lifetime, nor to the said J. G. in his lifetime, after the death of the said J. F. nor to A. F. widow, now deceased, executrix with the said J. G. of the testament of the said J. F. which said A. F. the said J. G. survived, nor to the said J. B. since the death of the said J. G. or to any or either of them, but to render the same to the said J. F. in his lifetime, or to the said J. G. and A. F. or either of them, since the death of the said J. G. the said J. D. in his lifetime, and the said C. D. since the death of the said J. D. have altogether refused, and the said C. D. doth still refuse, and unjustly detains the same from the said J. B.; whereupon the said J. B. saith that he is injured, and hath sustained damage to the value of forty pounds, and thereupon he brings suit, &c.;

AGAINST HEIR — PLEA, BY HEIR — REPLICATION.

&c.; and the said J. B. bringeth here into court as well the writing-obligatory afore said, which testifies the debt afore said, in form afore said, the date whereof is the same day and year afore said, as the letters-testamentary of the said J. F. whereby it sufficiently appears to the court here that the said J. G. and A. F. were executors of the last will and testament of the said J. F. and had administration thereof, as also of the letters-testamentary of the said J. G. whereby it likewise appears to the court here that the said J. B. is executor of the last will and testament of the said J. G. and had administration thereof, &c.

CHARLES DICKENSON, son and
heir of J. DICKENSON,
at suit of

MARY HASARD, WIDOW, sur-
viving executrix of JOHN HA-
SARD.

And the said Charles, by A. B. Plea (to debt
his attorney, comes and defends bond against
the wrong and injury, when, son and heir
&c. and says, that he cannot obligee) that
gainsay, but admits it to be defendant has
true, that the said John his fa- any lands by
ther, by his said writing-obli- soent, except
gatory became bound to the said J. H. in the said two hundred reversion.
pounds, as the said M. H. has in by her said declaration above al-
ledged; and also that the said Charles is the son and heir of the
said J. D.: Yet the said Charles further says, that he has not any
lands or tenements by hereditary descent from the said J. D. his
father, nor had any on the day of obtaining the said original writ
of the said Mary against him, nor at any time since, except the re-
version in fee simple of a messuage and divers lands, to wit, eighty
acres of land, with the appurtenances, situate, lying, and being in
D. in the county of L. expectant on the determination of a cer-
tain term of one thousand years, commencing on, &c.; and this,
&c.; wherefore he prays judgment if the said Charles, the son
and heir of his said father, ought to be charged with the said
debt, otherwise or any further than as to the reversion afore-
said, &c.

And the said Mary says, that by reason of any thing above in Replication that
pleading alledged by the said Charles, she ought not to be barred he had divers
from having her said action against him, because she says, that true lands, &c.
it is that the said Charles has not any lands or tenements by here-
ditary descent from the said John his father, nor had any on the
day of obtaining of the said original writ of the said Mary against
him, nor at any time since, except the said reversion in fee simple
of the said messuage and lands, with the appurtenances, as the
said Charles has in and by his said plea above alledged; neverthe-
less the said Mary, according to the form of the statute in such
case made and provided, says, that the said Charles, after the death
of the said John his father, and before the day of obtaining the
original writ of the said Mary against him, had divers lands and

tenements by hereditary descent from his said father, over and above the said reversion of the said messuage and lands, with the appurtenances, in the said plea of the said Charles above-mentioned; and this, &c.; wherefore she prays judgment and her said debt, together with her damages, by reason of the detaining thereof to be adjudged to her, &c.

Rejoinder that
he had not, &c.

And the said Charles says, that he the said Charles had not any lands or tenements by hereditary descent from his said father, over and above the said reversion of the said messuage and lands, with the appurtenances, in the said plea of the said Charles above-mentioned, as the said M. H. hath by her said replication in that respect above alledged; and hereupon he puts himself upon the country, &c. and the said Mary doth likewise the same; and because it is not known how much the said reversion of and in the said messuage and lands, with the appurtenances, is worth yearly in all issues above reprises; therefore as well to try the said issue between the said parties above joined as to enquire how much the said reversion is worth in all issues above reprises, according to the true value thereof, the sheriff is commanded that he cause to come here in eight days of the Purification of the Blessed Virgin Mary, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Issue,

Declaration in
debt on bond,
obligee against
the heir and de-
visee of obligor.
In C. P.

Vide stat. 3.W.
& M. c. 14.
f. 3.

MIDDLESEX, to wit. Henry Atkinson, late of Furnival's Inn, London, esquire, son and heir of Henry Atkinson his late father deceased, of Calcy, in the county of York, esquire, and William Vavalour, late of, &c. esquire, Thomas Mucklethwate, late of, &c. merchant, and Henry Atkinson, of, &c. apothecary, devisees of certain lands and tenements, with the appurtenances, of the said H. A. the father, by the last will and testament of the said H. A. the father, have been summoned to answer to Francis Fawkes, gentleman, in a plea that they render to the said F. F. two hundred pounds, which they *owe to and unjustly detain, &c.* And whereupon the said F. F. by A. B. his attorney, says, that whereas the said H. A. the father, whole son and heir the said H. A. of Furnival's Inn aforesaid is, and whose devisees of his said lands and tenements, with the appurtenances, the said William, Thomas, and H. A. are in his lifetime, to wit, on, &c. at, &c. by his certain writing-obligatory became bound to the said Francis in the said two hundred pounds, to be paid to the said Francis when he should be thereto afterwards requested, to which payment, well and truly to be made, the said H. A. the father bound himself and his heirs to the said Francis firmly by that writing-obligatory; nevertheless the said Henry the father in his lifetime, or the said Henry the son, William, Thomas and H. A. after the death of the said H. A. the father, although often requested, &c. have not, nor hath any of them rendered to the said Francis the said sum of two hundred pounds, or any part thereof, but have

have wholly denied to render the same, and the said Henry the son, William, Thomas, and H. A. still deny to render the same to the said Francis, whereby the said Francis saith that he is injured; and hath sustained damage to the value of ten pounds, and therefore he brings his suit, &c.; and he brings here into court the said writing-obligatory, which testifies the said debt in form aforesaid, the date whereof is the day and year in that respect above-mentioned, &c.

That an action of *debt et duntax* lies against the heir, *rule 5 Co 36 Civ. El. 350 712.* 1. Jones, 199 Plow. Com. 441. 2. Leon 11 1 Lev. 150. was held that an action of *distinct tantum* against an

heir was bad, even after verdict; but in a subsequent case, 1 Sid. 342, it was held to be cured by verdict, though bad upon a demurrer.

And the said William Vavasour and H. A. the now defendant, by A. B. their attorney, come and defend the wrong and injury, when, &c. and say *actio non*; because they say, that the said H. A. the testator, in his lifetime, was seised of divers lands and tenements situate, lying, and being in the said county of York, to the value of the said debt of the said Francis and above, and being so seised thereof, the said H. A. the testator in his lifetime, on, &c. at, &c. made his last will and testament in writing, and thereby did give, bequeath, and devise unto the said W. V. T. M. and H. A. the now defendant, and their heirs, all and every his messuages, cottages, lands, tenements, and hereditaments whereof he was possessed, or whereto he had any lawful or equitable right, title, or interest to dispose of by that his last will and testament, whatsoever the same should be lying or being, and in whose possession forever the same, or any part thereof, were or should be, and did thereby likewise give and bequeath unto the said W. V. T. M. and H. A. the now defendant, all and every his household and other goods, chattels, cattle, and other personal estate of what nature, kind, or quality forever the same consisted, upon the special trust and confidence that they, in such convenient time after his decease as to them should be thought meet and proper, should sell and dispose of such his messuages, cottages, lands, tenements, and hereditaments, and also of all and every his household and other goods, chattels, cattle, and other his personal estate, for so much money as could reasonably be gotten for the same, and that the said W. V. T. M. and H. A. the now defendant, should pay and apply the money arising by such sales and disposition in payment of his just debts and funeral expences, and if it should fortune that any surplus money should remain after all his just debts and funeral expences were paid off and discharged, then upon this further trust, that they the said W. V. T. M. and H. A. the now defendant, should pay over the same to his dear and loving wife E. A. to whom he gave and bequeathed such surplus money, and he did thereby declare that it was his will and mind, that his trustees above-named should and might deduct out of the monies arising by the sales of his real and personal estates thereinbe-

Plea that said died, and by his will, and devise all lands to defendants in trust to be sold for the payment of his just debts; and that there were other creditors besides plaintiff, and that the lands are not sold.

fore devised and bequeathed, all such sum and sums of money as they or any of them should expend and lay out touching the execution of the trust thereby vested in them, as by the said will it doth more fully appear; and the said H. A. the testator, afterwards, to wit, on, &c. at, &c. died intestate: And the said W. V. and H. A. the now defendant further say, that there are, and at the time of the death of the said H. A. the testator, divers other creditors as well upon bond as upon simple contract of the said H. A. the testator, besides the said F. F. and the said W. V. and H. A. the now defendant further say, that they the said W. V. and H. A. the now defendant are not, nor at the time of suing out the said original writ of the said F. F. or at any time before, were devisees of any messuages, &c. which were of the said H. A. the testator at the time of his death, or which he at the time of his death had a power of disposing of by his last will and testament, or of any rent, profit, term, or charge out of the same, otherwise than upon the trusts, and for the purposes in the said will mentioned as aforesaid, and that all the lands, &c. which were the said H. A.'s the testator at the time of his death, or which he at the time of his death had a power of disposing of by his last will and testament, still remain untold; and this, &c. wherefore, &c.

**Demurrer to the
last plea, with
special causes.**

And the said Francis saith, that the said plea of them the said W. V. T. M. and H. A. the executor in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar the said Francis from having and maintaining his aforesaid action against them; to which said plea, in manner and form as the same is above pleaded, he the said Francis hath no need, nor is he bound by the law of the land to answer, and this, &c.; wherefore for want of a sufficient plea in this behalf, the said Francis prays judgment on his said debt, together with his damages by occasion of detaining the same to be adjudged to him, &c.; and the said Francis, for causes of demurrer in law in this behalf, according to the form of the statute in such case made and provided, shews to the court here the causes following, that is to say, for that it is not shewn, in or by the said plea, of what lands or tenements the said H. A. the testator was seised at the time of making the said devise in the said plea mentioned, nor in what parish, vill, hamlet, or place known, the same lands or tenements, or any and what part thereof now situate, lying, and being, nor of what lands and tenements devised, as is in the said plea mentioned, the said H. A. died seised, nor in what parish, vill, hamlet, or place known, the said lands and tenements, or any or what part thereof were situate, lying, and being, nor whowere the creditors of the said testator upon bond or simple contract, nor for what sums, nor how such debts or any of them were contracted, and also that the said plea is uncertain, and wants form.

R. DRAPER.

And

DEBT.—ON BOND AGAINST HEIRS AND DEVISEES.

And the said Henry A. the son, by J. F. his guardian, who is duly admitted by the court here for that purpose, comes and defends the force and injury, when, &c. and says, that he, as son and heir of the said H. A. his father, ought not to be charged with the said debt by virtue of the said writing-obligatory, because he says, that he the said Henry the son, on the day of obtaining of the said original writ, or at any time since, had not, nor has any lands or tenements by hereditary descent from his father; and this &c. wherefore he prays judgment if he the said H. A. the son, as son and heir of his said father, ought to be charged with the said debt by virtue of the said writing-obligatory.

Hilary Term, 13. Geo. III.

LONDON, to wit. William Preddy putteth in his place A. B. Warre his attorney against Peter Clugh, William Miller, James Pitt and Sally his wife, and Robert Campbell and Mary his wife, which said Sally and Mary are daughters and coheiresses of William Price their late father deceased, and which said Peter, William Miller, and Sally, are devisees of the said William Price of divers lands and tenements of him the said W. P. in and by his last will and testament made in writing after the twenty-fifth day of March A. D. 1692, devised to the said Peter, William Miller, and Sally, in a plea of debt: London, to wit. And the said P. C. W. M. J. P. and S. his wife, put in their place C. D. their attorney, at the suit of the said W. P. in the plea aforesaid: London, to wit. And the said Robert Campbell and Mary his wife put in their place D. E. their attorney of the said W. P. in the plea aforesaid: London, to wit. Be it remembered that heretofore, that is to say, in Michaelmas term last past, before our lord the king at Westminster, came W. P. by A. B. his attorney, and brought into the court of our lord the king then there his certain bill against P. C. W. M. J. P. and S. his wife, and R. C. and M. his wife, which said S. and M. are daughters and coheiresses of William Price their late father deceased, and which said Peter, William Miller, and Sally, are devisees of the said W. P. of divers lands and tenements whereof he the said W. P. died seised in his demesne as of fee, and which the said W. P. in and by his last will and testament made in writing after the twenty-fifth day of, &c. devised to the said Peter, William, and Sally, being in the custody of, &c. and there are pledges for the prosecution, to wit, John Doe and Richard Ree, which said bill follows in these words, to wit: London, to wit. William Preddy complains of P. C. W. M. J. P. and Sally his wife, and R. C. and M. his wife, which said Sally and Mary are daughters and coheiresses of William Price their late father deceased, and which said Peter, William, and Sally, are devisees of the said W. P. of divers lands and tenements of him the said W. P. whereof he the said W. P. died seised in his demesne as of fee, and which said W. P. in and by his last

DEBT.—ON BOND BY SURVIVING PARTIES.

will and testament made in writing after the twenty-fifth day of, &c. devised to the said Peter, William, and Sally, being in the custody of, &c. of a plea that they render to the said William Preddy six hundred and two pounds six shillings and sixpence of lawful, &c. which they owe to and unjustly detain from him; for that whereas the said William Price, whose daughters and coheir-esses they the said Sally and Mary are, and which said Peter, W. M. and Sally are devisees of divers lands and tenements of the said W. P. as aforesaid, and whereof the said W. P. so died seized in fee as aforesaid, and so devised by him as aforesaid in his lifetime, to wit, on, &c. at, &c. by his certain writing-obligatory called a bond, sealed with his seal (and to the court of our said lord the king now here shewn, the date whereof is the day and year aforesaid), acknowledged himself to be held and firmly bound to the said W. P. in the said sum of six hundred and two pounds to be paid to the said W. P. when he the said William Price should be thereto afterwards requested, and to make the said payment well and faithfully, he the said W. P. bound himself and his heirs to the said William Preddy firmly by the said writing-obligatory; yet the said W. P. in his lifetime, and the said P. W. M. J. P. and Sally his wife, and R. C. and M. his wife, after the death of the said W. P. although often requested, have not, nor hath any or either of them yet paid the said sum of six hundred and two pounds; or any part thereof, to the said W. P. but they to do so have, and each of them hath hitherto wholly refused, and the said P. &c. still refuse, to the said W. P. his damage, &c.

Declaration in
debt on bond,
the surviving
obligee against
the surviving
obligor, on a
joint bond.

LANCASHIRE, to wit. J. T. complains of R. I. being, &c. in a plea that he render to the said plaintiff eight hundred and forty pounds of lawful money of Great Britain, which he owes to and unjustly detains from him; for that whereas the said defendant and one *J. R. since deceased, and whom the said defendant hath survived*, heretofore, to wit, on, &c. at, &c. in, &c. by their certain writing-obligatory, sealed with the seals of the said defendant and J. R. and to the court of our lord the king now here shewn, the date whereof is the same day and year aforesaid, acknowledged themselves to be held and firmly bound to the said plaintiff and one A. B. since deceased, and whom the said plaintiff hath survived, in the sum of four hundred and twenty pounds of good and lawful money of Great Britain to be paid to the said plaintiff and A. B. when they the said defendant and *J. R. should be thereto afterwards requested: Yet the said defendant and J. R. in the lifetime of the said J. R. and the defendant, since the death of the said J. R. although often respectively required to pay the said sum of four hundred and twenty pounds in the said writing-obligatory mentioned, did not, nor did either of them pay the same, or any part thereof to the said J. T. and A. B. deceased, in the lifetime of the said A. B. or to either of them, or to the said J. T.*
since

since the decease of the said A. B. but they, or either of them, to pay the same altogether refused, and the same and every part thereof are still due to the said J. T. and the said defendant still refuses to pay the same to the said plaintiff: And whereas, &c. &c. &c.

Mr. BARROW, who drew this declaration, thought proper to add a second Count, as *on a several and not on a joint bond*, which will be the same as the first,

only omitting what is in *Italic*, and making it in the singular number instead of the plural.

from that such a count is defective

Hilary Term, 27. Geo. III.

CAMBRIDGESHIRE, to wit. William Bristow and William Beeson complain against Samuel Rollin, cousin and heir at law of Noah Newton Trunnell Mears, deceased, who in his lifetime was the only son and heir at law of Robert Mears, deceased, who survived one Robert Tinson, also deceased, being in the custody of, &c. of a plea that he render unto them the said plaintiffs two hundred pounds of good and lawful money of Great Britain, which he owes to and unjustly detains from them; for that whereas the said R. M. deceased, and the said R. T. also deceased, whom the said R. M. ~~in his lifetime~~ survived, ~~in the lifetime of the said R. M. and R. T.~~ to wit, on, &c. at, &c. by their certain writing-obligatory, sealed with the seals of them the said R. M. and R. T. both since deceased, ~~in their lifetimes~~, and to the court of our said lord the king now here shewn, the date whereof is the day and year aforesaid, acknowledged themselves to be held and firmly bound to the said plaintiffs and one R. N. and one W. N. both since deceased, and whom the said plaintiffs have survived, in the lifetimes of them the said R. N. and W. N. by the names and descriptions of, &c. in the sum of two hundred pounds of, &c. to be paid to the said plaintiffs R. N. and W. N. when they the said R. M. and R. T. should be thereto afterwards requested: Yet the said R. M. and R. T. ~~both since deceased~~, in their lifetimes, did not, nor did either of them, nor did the said R. M. deceased, who survived the said R. T. deceased, after the death of the said R. T. and during the lifetime of him the said R. M. nor did the said Noah Newton Trunnell Mears, also deceased, who in his lifetime was the son and heir at law of the said R. M. deceased, who survived the said R. T. deceased as aforesaid, or any, or either of them pay, nor hath the said S. R. cousin and heir at law of the said N. N. T. M. deceased, who in his lifetime was son and heir at law of the said R. M. deceased, who survived the said R. T. deceased, as aforesaid, yet paid the said sum of two hundred pounds, or any part thereof, either to the said plaintiffs R. N. and W. N. both since deceased, or to any or either of them, in the lifetimes of the said R. N. and W. N. both since deceased, or in the lifetime of the survivor of them, the said R. N. and W. N. or after their respective deaths to the said plaintiffs, or either of them, although to pay the same, as well the said R. T. and R. M. in their lifetimes were, as also the said R. M. who survived the said R. T. in his lifetime,

BY EXECUTORS v. EXECUTOR OF ADMINISTRATOR.

lifetime, after the decease of the said R. T. was, and also the said N. N. T. M. as the son and heir of the said R. M. in the lifetime of him the said N. N. T. M. was requested; and although to pay the same the said S. R. the cousin and heir at law of the said N. N. T. M. deceased, who was the son and heir of the said R. M. deceased, hath been likewise requested; but to pay the same, or any part thereof, either to the said plaintiffs R. N. and W. N. in the lifetime of the said R. N. and W. N. or to either of them, or to the said plaintiffs who have survived the said R. N. and W. N. since their deaths, or to either of them, the said plaintiffs, as well as the said R. N. and R. M. in their respective lifetimes, as the said N. N. T. M. in his lifetime, after the death of the said R. M. did wholly refuse, as also the said S. R. since the death of said N. N. T. M. has hitherto wholly refused, and the said S. R. still doth refuse to pay the same, or any part thereof, to the said plaintiffs who have survived as aforesaid, or to either of them, to the damage of the said plaintiffs who have survived as aforesaid of pounds.

Drawn by MR. CROMPTON.

MIDDLESEX, to wit. The reverend John Lodington, clerk, and John Farr, esquire, executors of the last will and testament of the reverend Thomas Page, clerk, deceased, complain of John Norton, executor of the last will and testament of John Poyner Bisse, deceased, who was in his lifetime and at the time of his death administrator of all and singular the goods and chattels, rights and credits, which were of James Bisse, deceased, at the time of his death, who died intestate, being in the custody, &c. of a plea that he render to the said plaintiffs, as executors in form aforesaid, two hundred pounds, which he unjustly detains from them, &c.; for that whereas the said J. B. in his lifetime, to wit, on the tenth day of September, A. D. 1740, at Westminster, in the said county of Middlesex, by his certain writing-obligatory, sealed with the seal of the said J. B. and to the court of our said lord the king now here shewn, the date whereof is the same day and year aforesaid, acknowledged him self to be firmly bound to the said J. P. in his lifetime, in the said two hundred pounds, to be paid to the said J. P. in his lifetime, his executors, administrators, or assigns, when he the said J. B. should be thereunto afterwards requested; and the said plaintiffs say, that the said J. B. in his lifetime, and the said J. P. B. administrator as aforesaid, in his lifetime, after the death of the said J. B. although often requested, did not, nor did either of them pay the said two hundred pounds, or any part thereof, to the said T. P. in his lifetime, or to the said plaintiffs, executors as aforesaid, or to either of them, since his death, but the said J. B. in his lifetime, wholly refused, and the said J. P. B. administrator as aforesaid, in his lifetime, likewise wholly refused: And the said plaintiffs in fact aver, that after the death of the said J. B. to wit, on the day of A. D. , to wit, at Westminster aforesaid, in the said county of Middlesex, divers goods and chattels which were belonging

longing to the said J. B. at the time of his death, to the value of the debt aforesaid, came to the hands and possession of the said J. P. B. in his lifetime, and that the said J. P. B. afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, sold, wasted, purloined, converted, and disposed to his own use those goods and chattels; whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant, as executor as aforesaid, the said two hundred pounds above demanded: Yet the said defendant, although often requested, hath not yet rendered the said two hundred pounds, or any part thereof, to the said plaintiffs, as executors as aforesaid, or to either of them, but he the said defendant, executor as aforesaid, still refuses to pay the same, or any part thereof, to the said plaintiffs, as executors as aforesaid, their said damage of twenty pounds, and therefore they bring their suit, &c.; and they also bring into court here the letters testamentary of the said T. P. deceased, which testify to the court here that the said plaintiffs are the executors of the last will and testament of the said T. P. deceased, and have the administration thereof. Pledges, &c.

J. MORGAN.

That an action of *debt on bond* suggesting a *devastavit* does not lie against an executor, though otherwise in judgment,

vide 1. Vent. 315. 311. 2. Leo. 309.
145. 1. Leo. 147.

To the Justices of our Lord the King of the Bench.

CORNWALL, to wit. Mary Popham, widow, assignee of the estate and effects of William Brown, late of, &c. gentleman, an insolvent, according to the form of the statute in such case made and provided, by Thomas Jones her attorney, complains of William Brown the younger, gentleman, one of the attorneys of his majesty's court of the bench here, present here in court in his own proper person, of a plea that he render to the said plaintiff, assignee in form aforesaid, three thousand one hundred and sixty pounds of lawful, &c. which he owes to and unjustly detains from her; for that whereas the said William Brown the now defendant, before the discharge of the said W. B. the insolvent from prison hereafter mentioned, that is to say, on the ninth day of January, A. D. 1737, at, &c. aforesaid, by his certain writing-obligatory, sealed with the seal of the said W. B. the younger, and now shewn to the court of our lord the now king of the bench here, present here in court, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound to the said William Brown, the insolvent, in three thousand pounds, part of the said three thousand one hundred and sixty pounds, to be paid to the said William Brown, the insolvent, when he the said William Brown, the defendant, should be thereto afterwards requested: And whereas the said W. B. the defendant, before the said discharge of the said W. B. the insolvent, from prison, to wit, on the

the said ninth day of January 1737 afore said, at, &c. afore said, by his certain other writing-obligatory, &c. [as before] for one hundred pounds; and after the making of the said several writings-obligatory, and before the making a certain act of parliament, made at Westminster, in the county of Middlesex, in the tenth year of the reign of our lord the now king, entitled, "An Act for the Relief of Insolvent Debtors," and at the time of the making the said act, and upon the first of January 1742, mentioned in that act, the said W. B. the insolvent, was from thence until his discharge hereafter mentioned, continued a prisoner for debt in his majesty's prison or gaol called the county gaol, at, &c.; and after the making the said act, to wit, at the general quarter sessions of the peace, held at, &c. in and for the said county of Cornwall, before the justices of our lord the now king assigned to keep the peace in and for the said county of Cornwall, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county of Cornwall, the said W. B. the insolvent, was duly discharged from the said imprisonment by virtue of the said act, whereby the said several writings-obligatory, by force of the said act, became and were duly vested in John Lyre, gentleman, who then was and still is clerk of the peace in and for the said county of Cornwall, and thereupon afterwards, to wit, on the tenth of May, A. D. 1744, at, &c. afore said, the said John Lyre then being clerk of the peace of and for the said county of C. by an indenture then and there made between the said John Lyre of the one part, and the said plaintiff of the other part, the one part whereof the said plaintiff, assignee as afore said, sealed with the seal of the said J. L. brings here into court, the date whereof, &c. according to the form of the said act, by force thereof, duly assigned the said several writings-obligatory (amongst other things) to the said plaintiff, the said plaintiff being before then and there duly chosen and appointed sole assignee of the estate and effects of the said insolvent, according to the form and effect of the said act, of all which said premises the said W. B. the defendant, afterwards, to wit, on the day and year last afore said, at, &c. had notice: Yet the said W. B. the defendant, although often requested, hath not yet paid the said three thousand one hundred and sixty pounds, or any part thereof, to the said W. B. the insolvent, before his insolvency, or to the said plaintiff, as assignee as afore said, after the said insolvency, but to pay them the same hath hitherto wholly refused, and still refuses to pay the same to the said plaintiff, assignee as afore said. Damages ten pounds. Pledges, &c.

Drawn by MR. WARREN.

See Declaration by Assignees of a bankrupt on bond to the bankrupt. *Thomp. Entr.* 106.

Hilary Term, 33. Geo. III.

WRIGHT, ADMINISTRATOR, &c.

against

BUCKS, to wit. Tho-

KING, AND ANOTHER DEVISEE, &c.

mas Wright, administrator of all and singular the goods and chattels, rights and credits which were of Thomas Wright deceased, who died intestate, complains of Thomas King, eldest son and heir of Christopher King, late deceased, and Mary King, widow, devisee in the last will and testament of John King, her late husband, deceased, of divers lands, tenements, and hereditaments, whereof the said John King died seised in his demesne as of fee and which said John King was another son and also devisee named in the last will and testament of the said Christopher King, his late father, deceased (lately otherwise called Christopher King, of Chesham, in the county of Bucks, innholder, otherwise called Christopher King, of the same place, innholder), of the same lands, tenements, and hereditaments so devised by the said John King to the said Mary, and of which said lands, tenements, and hereditaments the said Christopher King died seised in his demesne as of fee, being, &c. in a plea that they render to the said Thomas Wright, administrator as aforesaid, seven hundred and fifty pounds of lawful money of Great Britain which they unjustly detain from him; for this to wit, that whereas the said Christopher in his lifetime (whose eldest son and heir the said Thomas King is, and of which said John King, devisee of the said Christopher as aforesaid, the said Mary is devisee as aforesaid), to wit, on the tenth day of July, in the year of Our Lord 1777, at Aylesbury, in the said county of Bucks, by his certain writing-obligatory, sealed with the seal of the said Christopher in his lifetime, and to the court of our said lord the king now here shewn, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound to the said Thomas Wright deceased, in his lifetime, in the sum of three hundred and fifty pounds of lawful money of Great Britain, parcel of the said sum of seven hundred and fifty pounds to be paid to the said Thomas (meaning the said Thomas Wright deceased), his executors, administrators, or assigns, when he the said Christopher should be thereunto requested, for the payment of which said sum of seven hundred and fifty pounds to be well and faithfully made, he the said Christopher bound himself and his heirs by the said writing-obligatory: And whereas also the said Christopher in his lifetime, to wit, on the twenty-second day of August, in the year of Our Lord 1778, at A. aforesaid, in the said county of B. by his certain other writing-obligatory, sealed with the seal of the said Christopher in his lifetime (and to the court of the said lord the king now here shewn, the date whereof is the same day and year last aforesaid) acknowledged himself to be held and firmly bound to the said T. W. deceased, in his lifetime, in the said sum

Debt on bond in B. R. by administrator of the deceased against the devisee of the deceased. S. C. 4. W. M. C. 24.

ad Count.

Qu. If this case is within the statute which only names the first devisee? See *Plowd. Com. 441. Jacob's Law Dict. tit. Debt.*

Conclusion.

Administration
granted.Profect of let-
ters of adminis-
tration.Plea by devisee,
Riens, &c.

of four hundred pounds (residue of the said sum of seven hundred and fifty pounds) to be paid to the said T. W. deceased, his executors, administrators, or assigns, when he the said Christopher should be thereunto requested: And the said Christopher in his lifetime, well and truly to pay the said sum of four hundred pounds, bound himself and his heirs firmly by the said writing-obligatory last-mentioned; nevertheless the said Christopher in his lifetime, and the said Thomas King, eldest son and heir of the said Christopher, and the said John King, the other son and devisee as aforesaid, in his lifetime and after the death of the said Christopher King, and the said Mary King, devisee of the said John King as aforesaid, after the death of the said John King deceased (although often respectively requested, &c.) have not, nor hath any of them paid the said sum of seven hundred and fifty pounds, or any part thereof, to the said T. W. deceased, in his lifetime, or to the said T. W. the now plaintiff, administrator as aforesaid, since the death of the said T. W. deceased (to which said T. W. the now plaintiff, administration of all and singular the goods and chattels, rights and credits which were of T. W. deceased, at the time of his death, by Luke Hailop, bachelor of divinity, archdeacon and commissary of the archdeaconry of Bucks lawfully constituted, to whom the commission of the administration aforesaid did of right belong, to wit, on the twenty-second day of January, in the year of Our Lord 1793, to wit, at A. aforesaid, in the county of Bucks aforesaid, was in due form of law committed), but to pay the same, or any part thereof, to the said Thomas Wright deceased, in his lifetime, or to the said T. W. the now plaintiff, administrator as aforesaid, after the death of the said T. W. deceased, the said Christopher King deceased, in his lifetime, and the said Thomas King, eldest son and heir as aforesaid, and the said John King, devisee of the said Christopher King as aforesaid, since the death of the said Christopher King, and the said Mary, devisee of the said John King deceased, since the death of the said John King, have and each of them hath altogether refused, and the said Thomas King, eldest son and heir as aforesaid, and the said Mary, devisee of the said John King as aforesaid, still do, and each of them doth refuse to pay the same to the said Thomas Wright, the now plaintiff, administrator as aforesaid, to the damage of the said T. W. the now plaintiff, administrator as aforesaid, of fifty pounds, and therefore he brings su., &c.: And the said T. W. the now plaintiff, brings here into court the letters of administration aforesaid, which sufficiently prove to the court here the granting thereof in form aforesaid, the date whereof is the same day and year in that behalf aforesaid; pledges, &c.

And the said Mary King, by A. B. her attorney, comes and defends the wrong and injury, when, &c. and says that she ought not to be charged as devisee with the debt aforesaid, because she says that she had not, nor at any time had any lands or tenements in fee simple by devise from the said John King, whereof he was devisee

DEBT.—DEMURRER to DECLARATION.

devisee, named in the last will and testament of the said Christopher King, in the said declaration mentioned, and this she is ready to verify; wherefore she prays judgment if she, as devisee as aforesaid, ought to be charged with the said debt by virtue of the said writing-obligatory.

T. BARROW.

And the said M. K. widow, by A. B. her attorney, comes and defends the wrong and injury, when, &c. and says, that the said declaration, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said T. W. to have or maintain his aforesaid action thereof against her the said M. nor is she under any necessity or in anywise bound by the law of the land to answer thereto, and this she is ready to verify; wherefore for want of a sufficient declaration in this behalf, she the said M. prays judgment, and that the said T. W. may be barred from having or maintaining his aforesaid action thereof against her, &c.

Upon a consultation with Mr. Gibbs, he thought the action maintainable upon the spirit of the act, making the first devise absolutely void as against creditors.

allegations shall not be prejudiced by it; arguments of inconvenience too might be urged.

From the fullest consideration I have been able to give this case; I incline to advise the defendant Mary not to plead, but demur generally to plaintiff's declaration:—for it appears to me, that admitting she is, what she is there stated to be, the devise of John King, who was devisee of Christopher the obligor, of the same lands, she is not therefore liable to this action. Before the Stat. 3. & 4. W. & M. c. 14. a devisee was not chargeable with the debts of the defor; and that statute only makes the first devise void as against the creditors of the obligor, and gives a right of action against the *her and devisee of the obligor* jointly:—But Mary King is not, nor is she stated to be, the devisee of the obligor, but the devisee of the devise of the obligor, and the remedy against the devise being given by the statute, as the words of the statute do not extend beyond the devise of the obligor, there is good reason to infer that subsequent purchasers (and a devisee is in law a purchaser) are not comprehended in it; especially as the statute in the 5th (the only part in which it notices subsequent purchaser) provides that the *first*

I cannot for these reasons but think, that it is not fit to debar to a remedy like this attempted to be supported at law when partial injustice is the object, and in a case where equal justice can not be administered, especially where another forum is provided and open to the creditor, competent to give and enforce equitable relief on both sides.

And it is a not less facie reason for demurring in this particular case that in fact the premises devised are some of them of a nature to be only equitable assets; and all of them (I understand) devised in trust for payment of debts, whereby they are taken out of the statute of fraudulent devises, and liable to debts in a court of equity only; so that if I were to plead this fact and prevail upon such an issue, it would drive the plaintiff into a court of equity:—Should the defendant fail therefore, upon the demurrer, by the same rule that the court would give leave to withdraw the demurrer and plead (which it will do in ordinary cases when the law is really doubtful; it will refer this extraordinary case to its proper jurisdiction, without hearing a plea, the intent of which is only to show that it has none.

T. BARROW.

Hilary Term, 33. Geo. III.

Debt on bond,
in B. R. admin-
istrator of chb
gee against exe-
cutor of chb
gor.

WRIGHT, ADMINISTRATOR,
against

KING, EXECUTRIX, &c.

BUCKS, to wit. Thomas
Wright, administrator of all and

singular the goods and chattels, rights and credits, which were of Thomas Wright, deceased, who died, intestate, complains of Mary King, widow, executrix of the last will and testament of John King, her late husband, deceased, which said John King in his lifetime was executor of the last will and testament of Christopher King, his late father, deceased, otherwise called Christopher King, of Chessham, in the county of Bucks, innholder, otherwise called Christopher King, of the same place, innholder, being, &c. in a plea that she tender to the said T. W. administrator as aforesaid, seven hundred and fifty pounds of lawful money of Great Britain, which she unjustly detains from him; for this, to wit, that whereas the said Christopher in his lifetime, to wit, on the tenth day of July, in the year of Our Lord 1777, at Aylesbury, in the said county of Bucks, by his certain writing-obligatory, sealed with the seal of the said Christopher in his lifetime, and to the court of our lord the king now here shewn, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound to the said Thomas Wright deceased in his lifetime, in the sum of three hundred and fifty pounds of good and lawful money of Great Britain, parcel of the said sum of seven hundred and fifty pounds to be paid to the said Thomas (meaning the said T. W. deceased), his executors, administrators, or assigns, when he the said Christopher should be thereunto requested, for the payment of which said sum of three hundred and fifty pounds to be well and faithfully made, he the said Christopher bound himself, his executors, and administrator, firstly by the said writing-obligatory: And whereas also the said Christopher in his lifetime, to wit, on the twenty-second day of August, in the year of Our Lord 1778, at A. aforesaid, in the said county of Bucks, by his certain other writing-obligatory, sealed with the seal of the said Christopher in his lifetime (and to the court of our lord the now king now here shewn, the date whereof is the same day and year last aforesaid), acknowledged himself to be held and firmly bound to the said T. W. deceased, in his lifetime, in the sum of four hundred pounds, residue of the said sum of seven hundred and fifty pounds, to be paid to the said T. W. deceased, his executors, or administrators, when he the said Christopher should be thereunto requested; and the said Christopher in his lifetime, well and truly to pay the said sum of four hundred pounds, bound himself and his executor firstly by the said writing-obligatory last-mentioned; nevertheless the said Christopher in his lifetime, and the said J. E. executor of the said Christopher as aforesaid, in the lifetime of him the said John, and after the death of the said Christopher, and the said Mary, executrix of the said John King, after the death of the said John King (although often respectively requested, &c.) have not, nor hath any of them paid the said seven hundred and fifty pounds, or any part thereof, to the

the said Thomas Wright deceased, in his lifetime, or to the said T. W. the now plaintiff, administrator as aforesaid, since the death of the said T. W. deceased (to which said T. W. the now plaintiff, administration of all and singular the goods and chattels, rights and credits, which were of T. W. deceased, at the time of his death, by Luke Heslop, bachelor of divinity, archdeacon, and commiffary of the archdeacon of Bucks, lawfully constituted, to whom the commission of the administration aforesaid did of right belong, to wit, on the twenty-second day of January, in the year of Our Lord 1793, to wit, at A. aforesaid, in the said county of Bucks, was in due form of law committed), but to pay the same, or any part thereof, to the said T. W. deceased, in his lifetime, or to the said T. W. the now plaintiff, administrator as aforesaid, after the death of the said T. W. deceased, the said Christopher King deceased, in his lifetime, and the said John King, executor of the said Christopher King as aforesaid, in the lifetime of the said John King, and since the death of the said Christopher King, and the said Mary, executrix of the said John King as aforesaid, since the death of the said John King have and each of them hath hitherto altogether refused to pay the same, and the said Mary King, executrix of the said John King as aforesaid, still doth refuse to pay the same to the said T. W. the now plaintiff, administrator as aforesaid, to the damage of the said T. W. the now plaintiff, administrator as aforesaid, of fifty pounds, and therefore he brings his suit, &c. : And the said T. W. the now plaintiff, brings into court here the letters of administration aforesaid, which sufficiently prove to the court here the granting thereof in form aforesaid, the date whereof is the day and year in that behalf aforesaid; pledges, &c.

And the said Mary, executrix as aforesaid, by John P. her attorney, comes and defends the wrong and injury, when, &c. and says that the said Thomas ought not to have or maintain his aforesaid action against her, because she says, that one Nicholas Sketowe, esquire, heretofore, to wit, in this present Hilary term, in the court of our lord the now king, before the king himself here, the said court then and still being held at Westminster, in the county of Middlesex, by bill, without the writ of our said lord the king, by the consideration and judgment of the said court, recovered against the said Mary, as such executrix as aforesaid, as well a certain debt of two hundred pounds*, as also ninety-three shillings, which in and by the said court of our lord the king, before the king himself here, were adjudged to the said N. S. for the damages which he had sustained, as well on occasion of the detain-

Plea, judgments recovered on bond against defendant as executrix, more than sufficient to cover the assumpsits. These judgments were confessed by defendant.)

* The sum due on the penalty of the bond. It is not expedient to shew in the plea the real sum due by the condition, and though it may be done, it is not advisable here, as the money really due by the

condition does not cover the assumps, at all events it is better that plaintiff should reply to it, than that the defendant should admit it by his plea.

ing of that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said Mary was convicted, as by the record and proceedings thereof remaining in the said court of our lord the king, before the king himself, more fully appears: And the said Mary in fact further says, that one John Graveney, heretofore, to wit, in this same Hilary term (the like judgment for two hundred pounds debt, and ninety-three shillings damages; the like judgment by Elizabeth Bowlen for one hundred pounds debt, and ninety-three shillings damages; the like judgment by Mary Sutthery, widow, George Sutthery, and Patrick Hepburn, executors of the last will and testament of George Sutthery deceased, for six hundred pounds debt, and ninety-three shillings damages): And the said Mary King in fact further saith, that the said several judgments so had and obtained by the said N. S. J. G. and E. B. and by the said M. S. G. S. and P. H. executors as aforesaid, against the said Mary King, executrix as aforesaid, were and each and every of them was had and obtained for just and true debts, really and *bona fide* due and owing from the said Christopher King, at the time of his death, to them the said N. S. J. G. and E. B. and to the said M. S. G. S. and P. H. executors as aforesaid respectively, and which at the time of rendering the said several judgments were and still remain in full force, strength, and effect, not reversed, annulled, set aside, or in anywise paid off or satisfied, to wit, at A. aforesaid: And the said M. K. further saith, that she hath fully administered all and singular the goods and chattels which were of the said Christopher King deceased, at the time of his death, which have ever come to her hands to be administered, except goods and chattels to the value of five pounds, to wit, at A. aforesaid: *And the said M. K. hath not, nor on the day of exhibiting the bill of the said T. W. administrator as aforesaid, or at any time since, had any goods or chattels which were of the said Christopher King deceased, at the time of his death in her hands to be administered, except the said goods or chattels to the value of five pounds, which are not sufficient to pay off and discharge the money due and owing on the said several judgments so recovered as aforesaid, to which they are charged and chargeable; and this she is ready to verify; wherefore she prays judgment if the said T. W. administrator as aforesaid, ought to have or maintain his aforesaid action against her.*

V. GIBBS.

1. Sid. 215.
Salk. 312. 1.
Ld. Raym. 673.

Replication,
shewing how
much was due
on each judg-
ment and assets
ultra, and that
defendant keeps
the judgments
on foot *per*
fraudem
3. Lev. 368.

And the said Thomas Wright, administrator as aforesaid, says, that he by reason of any thing by the said Mary, executrix as aforesaid, above in pleading alleged, ought not to be barred from having and maintaining his aforesaid action thereof against her the said Mary, executrix as aforesaid, because as to the said judgment against the said Mary, executrix as aforesaid, by the said N. S. as aforesaid obtained in the plea aforesaid; first, the said T. W. as aforesaid, says, *that one hundred and nine pounds thirteen shillings only, and no more, of the money aforesaid by the said N. S. against the said Mary, executrix as aforesaid, in form aforesaid recovered, were justly and really due to the said N. S. at the time of the rendering*

of that judgment, and that from the time of the rendering of that judgment until the day of exhibiting the bill of the said T. W. administrator as aforesaid, the said N. S. was always ready and willing, and yet is ready and willing, and offered to receive and accept of the said Mary, executrix as aforesaid, the said one hundred and nine pounds thirteen shillings in full satisfaction and discharge of the judgment aforesaid, of the whole money thereby recovered and secured, and upon payment thereof the said N. S. was and is ready and willing, and offered to acknowledge satisfaction upon record of the said judgment, to wit, at A. aforesaid, in the county of B. aforesaid; nevertheless the said Mary hath hitherto delayed the payment of the said one hundred and nine pounds thirteen shillings, and hath suffered the said judgment to be and remain in its full force, strength, and effect, and undischarged, *and the same hath kept on foot by fraud and covin, with intent to defraud and deceive him the said T. W. administrator as aforesaid, of his true and just debt aforesaid*, to wit, at A. aforesaid, in the county of B. aforesaid (the like replication to the judgment obtained by John Graveny of one hundred and forty-four pounds thirteen shillings only due; the like replication to the judgment obtained by Elizabeth Bowlen of fifty-seven pounds three shillings only due; the like replication to the judgment recovered by Mary Sutthery, George Sutthery, and Patrick Hepburn, executors, &c. of two hundred and fourteen pounds thirteen shillings only due): And the said T. W. administrator as aforesaid, further says, that the said Mary, executrix as aforesaid, on the day of exhibiting the bill of the said T. W. administrator as aforesaid, to wit, on the same day and year in the said declaration mentioned, to wit, at A. aforesaid, in the county of B. aforesaid, *had divers goods and chattels which were of the said C. K. deceased, at the time of his death in her hands to be administered, sufficient to satisfy as well the said several judgments so had and obtained by the said N. S. J. G. and E. B. and the said M. S. G. S. and P. H. executrix, &c. respectively, against the said M. executrix as aforesaid, as also the said debt and damages now in demand against her by the said T. W. administrator as aforesaid, by virtue of the said two several writings-obligatory, to wit, at A. aforesaid, in the county aforesaid; and thus he the said T. W. administrator as aforesaid, is ready to verify; wherefore he prays judgment and his debt aforesaid, together with his damages, by means of the detaining of the said debt, to be adjudged to him, &c.*

This is traversed in the rejoinder.

1. Ld. Raym. 678. 1. Salk. 312.

W. MANLEY.

And the said Mary, executrix as aforesaid, as to the said plea of the said Thomas, administrator as aforesaid, by him above pleaded by way of reply to the said plea of the said Mary, executrix as aforesaid, by her above pleaded in bar, protesting that the said N. S. J. G. and E. B. and the said M. S. G. S. and P. H. execu-

Rejoinder, protesting that the obligees were not willing to accept the sum in the replication in discharge

of the judgments recovered, and that the defendant has not assets to satisfy the same, and concludes with a verification.

C c 2

cutrix

cutrix and executors as aforesaid, at the time of the exhibiting of the bill of the said T. W. were not, nor was either of them, nor ever since have or hath been ready and willing and offered to take and accept of and from the said M. the said several sums of money so specified by the said Thomas Wright in his replication aforesaid, in full satisfaction and discharge of the said several judgments, or of any of them, or of the money thereby recovered and secured, nor upon payment thereof were, or was, or are the said N. S. J. G. and E. B. and of the said M. S. G. S. and P. H. executrix and executors as aforesaid, or any or either of them ready or willing, or have they or either of them offered to acknowledge satisfaction upon record of the said judgments, or any of them, in manner and form as the said T. W. hath in his said replication above alledged; And the said Mary, executrix as aforesaid, protesting also that at the time of the exhibiting the said bill of the said T. W. she the said Mary had not, nor now hath divers goods and chattels which were of the said Christopher King deceased, at the time of his death in her hands to be administered, sufficient to satisfy as well the said several judgments so had and obtained by the said N. S. J. G. and E. B. and the said M. S. G. S. and P. H. executrix and executors as aforesaid, against the said M. executrix as aforesaid, as also the said debt and damages now in demand against her by the said T. W. administrator as aforesaid, by virtue of the said several two writings-obligatory, as alledged by the said T. W. administrator as aforesaid, in his aforesaid replication: For rejoinder in this behalf the said Mary, executrix as aforesaid, says, that the said several judgments in the said plea of the said T. W. administrator as aforesaid mentioned, still respectively remain in full force and unpaid for want of assets of the said Christopher King, come to or being in the hands of the said Mary, executrix as aforesaid, to be administered sufficient for the discharge of the same, to wit, at A. aforesaid, in the county aforesaid; without this that the said several judgments above pleaded in bar *are or any of them is kept on foot by fraud and covin, with intent to defraud and deceive him the said T. W. administrator as aforesaid, of his just and true debt aforesaid*, in manner and form as the said T. W. administrator as aforesaid, hath above in his said replication in that behalf alledged, and this she the said Mary, executrix as aforesaid, is ready to verify; wherefore she prays judgment, and that the said T. W. administrator as aforesaid, may be barred from having and maintaining his aforesaid action against her, &c.

T. BARROW.

Jones 92. Carth.
221 5 Mod. 64.
3. Lev. 368.

I see no reason why this rejoinder should not immediately be offered or made, and conclude to the contrary; but the advocates are in the way this is drawn.

§ 8. Whether it is better in this case to take issue upon the *fraudem*, or assets *ultra*, or will not either do?

I apprehend it will be incumbent upon plaintiff upon these pleadings to establish a formal averment in his replication, that only the sums he alledge were due upon the judgments pleaded, and that the defendant neglects to satisfy them from a fraudulent design of delaying plaintiff's remedy against the assets. Fraud must either be positively proved, or by inference.

DEBT ON BOND.—REJOINDER.

ence. The former is hardly possible in cases like the present, but it it be shewn that no more is due upon the judgments than the plaintiff contends to be the true debts, and that defendant has more assets than will be sufficient to satisfy them all, it will be taken as evidence of fraud, or such a falsifying of defendant's plea, as will entitle plaintiff to a verdict in his favour, 1. Salk. 312. 2. Saund. 50. 1. Ld. Raym. 263. 678. but if it appears upon the trial that defendant has not assets beyond the sums averred by plaintiff's

replication to be due upon the judgments, here must be a verdict for her, as it seems to me, for then the judgments have a legal priority, 1. Ld. Raym. 678. 1. Salk. 312. In short the defendant will have nothing more to do upon this issue than to meet the evidence of plaintiff, in proof of her having more assets than will extend to satisfy the sums *bona fide* due upon the judgments, for that must be the criterion of fraud or honesty in her defence of the action. T. BARROW.

And the said Mary, executrix as aforesaid, as to the said plea of the said Thomas, administrator as aforesaid, by him above pleaded by way of reply to the said plea of the said Mary, executrix as aforesaid, by her above pleaded in bar, protesting that the said N. S. J. G. and E. B. and the said M. S. G. S. and P. K. executrix and executors as aforesaid, at the time of the exhibiting of the said bill of the said plaintiff, were not, nor was either of them, nor ever since have or hath been ready and willing and offered to take and accept of and from the said Mary the said several sums of money so specified by the said plaintiff in his replication aforesaid, in full satisfaction and discharge of the said several judgments, or of any of them, or of the money thereby recovered and secured, nor upon payment thereof were, or was, or are the said N. S. J. G. &c. &c. or any or either of them, ready and willing, or have they, or any or either of them, offered to acknowledge satisfaction upon record of the said judgments, or any of them, in manner and form as the said plaintiff hath in his said replication above alleged: And the said Mary, executrix as aforesaid, protesting also that at the time of the exhibiting of the said bill of the said plaintiff, she the said M. had not, nor now hath divers goods and chattels which were of the said Christopher King deceased, at the time of his death, in her hands to be administered, sufficient to satisfy as well the said several judgments so obtained by the said N. S. J. G. &c. &c. respectively against the said M. executrix as aforesaid, as also the said debt and damages now in demand against her by the said plaintiff, by virtue of the said two several writings obligatory as alleged by the said plaintiff in his aforesaid replication: For rejoinder in this behalf the said Mary, executrix, as aforesaid, says, that the said several judgments in the said plea of the said M. by her above pleaded in bar mentioned, still respectively remain in full force and unpaid for want of assets of the said C. K. come to or being in the hands of the said Mary, executrix as aforesaid, to be administered, sufficient to discharge the same, to wit, at A. aforesaid, in the county aforesaid; without this, that the said several judgments above pleaded in bar, are, or any of them is kept on foot by fraud and covin with intent to defraud and deceive

(a) Rejoinder protesting against all the facts of the replication, except the fraud, and traversing that with a verdict in bar.

(a) This is another rejoinder between the same parties, very little differing from the preceding.

him the said plaintiff of his true and just debt aforesaid, in manner and form as the said plaintiff hath above in his said replication in that behalf alledged; and this she the said Mary is ready to verify; wherefore she prays judgment, and that the said plaintiff may be barred from having and maintaining his aforesaid action against her, &c.

T. BARROW.

Mr. Baldwin, before whom this rejoinder was laid, concurring in opinion with Mr. Barrow, that it was as well to take

issue on the *pro fraudem*, and conclude to the country, accordingly drew the following rejoinder:

Rejoinder, taking issue on the fraud and affects *ultra*, but concluding to the country.

And the said Mary, as to the said plea of the said Thomas, by him above in reply pleaded to the said plea of the said Mary, by her above pleaded in bar, saith, that by reason of any thing by the said Thomas in that replication alledged, he ought not to have or maintain his aforesaid action thereot against her; because she says, that the said several judgments in that replication mentioned were not, nor was any of them kept on foot by fraud and covin with intent to defraud and deceive the said Thomas in manner and form as the said Thomas hath in his said replication alledged: And the said Mary further says, that at the time of exhibiting the bill of the said Thomas, she the said Mary had not any goods or chattels which were of the said C. K. at the time of his death in her hands to be administered, more than sufficient to satisfy the said several judgments in the said plea of the said Mary mentioned; and of this she puts herself upon the country, &c.

W. BALDWIN.

Declaration on a bond made in Ireland
{1} Treble the penalty of the bond in English currency.

MIDDLESEX, to wit. C. D. complains of J. Q. being, &c. in a plea that he render to her the said C. D. (1) pounds of lawful money of Great Britain, which he owes to and unjustly detains from her; for that whereas the said J. Q. heretofore, to wit, on, &c. by his certain writing-obligatory sealed with his seal, and to the court of our lord the king now here shewn, the date whereof is the day and year aforesaid, acknowledged himself to be holden and firmly bound unto the said C. in the sum of ninety-two pounds sterling money of the said kingdom of Ireland, to be paid to the said C. when he the said J. should be thereto afterwards requested; and the said C. avers, that the said sum of money mentioned in the said writing-obligatory at the time of the making thereof as aforesaid, was of a large value, to wit, of the value of pounds of lawful money of Great Britain, to wit, at, &c. whereby an action hath accrued to the said C. to demand and have of and from the said J. the said sum of pounds of lawful money of Great Britain, so being the value of lawful money of Great Britain of the said sum of money mentioned in the said writing-obligatory at the time of making thereof as aforesaid, parcel

cel of the said sum of (2) pounds above demanded: And (2) The sum
 whereas the said J. afterwards, to wit, on, &c. borrowed of the demanded in the
 said C. a certain other sum of money, to wit, the sum of (3) pounds beginning of the
 of like lawful money of Great Britain, to be paid to the said C. when declaration.
 he the said J. should be thereto afterwards requested, by means (3) Amount of
 whereof an action hath accrued to the said C. to demand and have of the penalty in
 and from the said John the said last-mentioned sum of money, English cur-
 parcel of the said pounds above demanded: And whereas cy.
 the said John afterwards, to wit, on, &c. had and received to the
 use of the said C. another large sum of money, to wit, the sum of
 (4) pounds of lawful money of Great Britain, to be paid to (4) Same as the
 the said C. when he the said J. should be thereto afterwards re- last.
 quested, whereby an action, &c.; yet the said J. although often
 requested, hath not as yet paid the said sum of pounds above
 demanded, or any part thereof to the said C. but to pay the same or
 any part thereof to the said C. hath hitherto wholly refused, and
 still refuses, to the damage of the said C. of twenty pounds, and
 therefore she brings suit, &c.

V. LAWES.

Common Pleas. Hilary Term, 29. Geo. III.

MIDDLESEX, to wit. Isaac Jackman, late of the parish of
 St. George, Bloomsbury, in the county of Middlesex, gentleman,
 was summoned to answer unto Ann Bullfinch, widow, and relict
 of her late husband John Bullfinch, formerly Ann Killingsley,
 spinster, of a plea that he render to the said Ann the sum of two
 hundred pounds of lawful, &c. which he owes to and unjustly de-
 tains from her, &c.; and thereupon the said Ann, by A. B. her
 attorney, complains, that whereas the said Isaac, whilst the said
 Ann was sole, and before her intermarriage with the said John B.
 to wit, on the twenty-fifth of March A. D. 1773, at the parish
 aforesaid, in the said county, by his certain writing-obligatory,
 sealed with his seal, acknowledging himself to be held and firmly
 bound to the said Ann, then Ann K. spinster, in the said sum
 of two hundred pounds to be paid to the said Ann or her certain
 attorney, executors, administrators, or assigns, when he the said
 Isaac should be thereto afterwards requested, yet the said Isaac, al-
 though often requested, &c. hath not at any time hitherto paid the
 said sum of two hundred pounds above demanded, or any part
 thereof to the said Ann, neither did he pay the same, or any part
 thereof, to the said John B. the late husband of the said A. after
 the intermarriage and during the lifetime of the said John B. but
 to pay the said sum of money, or any part thereof, to them or either
 of them, the said Isaac hath hitherto altogether, and he still re-
 fuses to pay the same to the said A. and the same still remains
 wholly due and unpaid, wherefore the said A. says she is in-
 jured, and hath sustained damage to the amount of twenty
 pounds, and therefore she brings suit, &c.; and she brings here
 into court the said writing-obligatory, which fully testifies the debt
 aforesaid, the date whereof is the day and year above-mentioned.

Debt by feme on
 bond entered in
 to her whilst
 sole, who after-
 wards inter-
 married with
 J. B. since death.

S. MARRYATT.

Exchequer

MIDDLESEX. Declaration in debt for two hundred and eighty pounds upon a bond for that sum executed by the defendant to the plaintiff, bearing date the twenty-fourth of July 1786.

King's Bench.

DAVID DEWAR, Esquire, } AND the said Samuel, by Tho. Plea of usury in
against } mas Symmons his attorney, comes debt on bond (to
 SAMUEL SPANN, Esquire, } and defends the wrong and injury, secure the pur-
 and prays oyer of the said writing-obligatory, and it is read to him chase-money by
 in these words, to wit: "KNOW all men by these presents that surety of an ob-
 we Charles Phillips, of St. Christopher's in the West Indies, but ligation recites, can-
 now of Margate in the county of Kent, esquire, and Samuel celling a former
 Spann, of the city of Bristol, esquire, are held and firmly bound bond given in
 to D. D. of Park Place, St. James's, in the county of Middle- the West Indies
 sex, esquire, in the sum of two thousand eight hundred pounds of carrying six per
 good and lawful money of Great Britain, to be paid to the said cent. per annum
 D. D. or his certain attorney, executors, administrators, or as- interest, and re-
 signs, for the true payment whereof we bind ourselves, and each serving six per
 of us, our, and each of our executors, administrators, or as- cent. on the bond
 signs, and every of them firmly by these presents, sealed with our executed by both
 seals, dated this twenty-fourth of July, in the twenty-sixth year of and.
 the reign of our sovereign lord George the Third, by the grace of 27
 God of Great Britain, France, and Ireland, king, defender of the
 faith, &c. and in the year of Our Lord 1786;" and the said Samuel
 also prays oyer of the condition of the said writing-obligatory, and
 it is read to him in these words, to wit: "Whereas the said C. P.
 sometime in or about the twenty-fifth of June 1769, contracted
 and agreed with George Dewar, deceased, father of the above-nam-
 ed D. D. for the absolute purchase of the fee and inheritance of
 certain lands and appurtenances of the said G. D. situate in the
 parish of Trinity Palmeto Point, and adjoining to the estate of the
 said C. P. in St. Christopher's, at the price of one thousand four
 hundred pounds, and conveyances were accordingly executed by
 the said G. D. to the said C. P. who hath been ever since, and still is
 in the possession and ownership thereof: And whereas it was agreed
 at the making of the said contract, and it was part of the terms
 thereof, that the said sum of one thousand four hundred pounds,
 the purchase-money for the same, should remain secured by a joint
 bond of the said C. P. and another person to be in that behalf, and
 who was resident in England, and in consequence whereof the
 said Charles P. together with H. H. of the Middle Temple, Lon-
 don, gentleman, became bound to the said G. Dewar for pay-
 ment of the said one thousand four hundred pounds, with interest at
 six pounds per cent. in manner and at the times within-mentioned:
 And whereas it hath been proposed and agreed between the said
 C. P. and the above-named D. D. the son of the before-men-
 tioned G. D. deceased, that the former bond shall be cancelled, and
 a new bond shall be given for the payment of the said sum of one
 thousand four hundred pounds, with interest at six pounds *per cent.*
per annum, agreeable to the terms of the said original contract with the
 the

the said G. D.; Now therefore the condition of the above written obligation is such, that if the above-bounden C. P. and S. Spann, or either of them, or their or either of their heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to the above-named D. D. his executors, administrators, or assigns, the said sum of one thousand four hundred pounds of lawful, &c. clear of all deductions, on the twenty-fifth of June, which will be A. D. 1788; and also do and shall in the mean time well and truly pay or cause to be paid unto the above-named D. D. his executors, administrators, or assigns, all arrears of interest, and also pay the growing interest of the said sum of one thousand four hundred pounds at and after the rate of *six per cent. per annum* by half-yearly payments, on the twenty-fifth of December and twenty-fifth of June in each of the said years, the first payment to begin and be made on the twenty-fifth of December now next, then the above-written obligation to be void, otherwise to remain in full force;" which being read and heard, the said Samuel says that he ought not to be charged with the said debt by virtue of the said writing-obligatory in the said declaration mentioned, because he says, that the said writing-obligatory is not his deed; and of this he puts himself upon the country, &c.; And for a further plea in this behalf the said Samuel, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that he ought not to be charged with the said debt by virtue of the said writing-obligatory in the declaration mentioned, because he says, that after the twenty-ninth of September, which was in the year of Our Lord 1714, and also after the death of the said G. D. deceased, and before the making of the same writing-obligatory, to wit, on the twenty-fourth of July A. D. 1786, the said D. then and there being the legal personal representative of the said G. D. and the said sum of one thousand four hundred pounds for which the said C. P. and H. H. had so become bound to the said G. D. in his lifetime, as in the said condition recited, together with a further sum, to wit, the sum of seven pounds of lawful, &c. for interest thereof then remaining unpaid; it was corruptly, and against the form of the statute in such case made and provided, agreed by and between the said D. and the said C. P. that the bond so entered into by the said C. P. and H. H. should be cancelled, and that the said D. should forbear and give further time of payment of the said sum of one thousand four hundred pounds until the twenty-fifth of June in the year of Our Lord 1788, and should, for such his forbearance, be paid interest on the said sum of one thousand four hundred pounds in the mean time, and after the rate of six pounds *per cent.* for every hundred pounds for the quarter; and that for securing the payment as well of the said sum of one thousand four hundred pounds as of the interest then in arrear, and also the interest so agreed to be paid to the said D. for the forbearance of the said sum of one thousand four hundred pounds as aforesaid, the said C. P. and Samuel should jointly and severally execute, and as their act and deed deliver

STATUTES PLEADED—USURY.

deliver to the said D. a certain writing-obligatory in the penal sum of two thousand eight hundred pounds of lawful, &c. conditioned for the payment to the said D. of the said sum of one thousand four hundred pounds on the twenty-fifth of June in the year 1788 aforesaid, and also of the interest then in arrear as aforesaid, and the growing interest on the said sum of one thousand four hundred pounds, at the rate of six *per cent. per annum*, by half-yearly payments, on the twenty-fifth of December and the twenty-fifth of June, and that the first payment of such interest should begin and be made on the twenty-fifth of December then next ensuing: And the said Samuel further says, that in pursuance of, and according to the said corrupt and unlawful agreement, the said writing-obligatory so made by the said C. P. and H. H. to the said G. D. in his lifetime as aforesaid, was then and there, to wit, on the said twenty-fourth of July in the year 1786 aforesaid, at Westminster aforesaid, given up by the said D. to be cancelled; and that the said writing-obligatory in the declaration mentioned, with such condition thereunder written as aforesaid, was then and there made, and by the said C. P. and S. respectively sealed and delivered to the said D. and by him accepted and received in further pursuance of, and according to the said agreement; by means of which said several premises, and by force of the statute in such case made and provided, the said writing-obligatory in the declaration mentioned is utterly void; and this the said Samuel is ready to verify; wherefore he prays judgment if he ought to be charged with the said debt by virtue of the said writing-obligatory, &c.: And for further plea in this behalf the said Samuel, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that he ought not to be charged with the said debt by virtue of the said writing-obligatory in the declaration mentioned, because he says, that the said writing-obligatory was made and delivered by the said C. P. and S. to the said D. and by him accepted and received in pursuance of a certain corrupt and unlawful agreement made after the twenty-ninth of September, which was A. D. 1714, to wit, on the said twenty-fourth of July in the year 1786 aforesaid, at Westminster aforesaid, that is to say, in pursuance of the agreement made between the said D. and the said C. P. in the condition of the same writing-obligatory mentioned, whereby there was then and there reserved to the said David for the forbearance of the said sum of one thousand four hundred pounds in the said condition mentioned, above the rate and value of five pounds for the forbearance of one hundred pounds for a year, to wit, at the rate of six pounds *per year* for the forbearance of each and every one hundred pounds for the said sum of one thousand four hundred pounds, contrary to the form of the statute in such case made and provided; by means whereof, and by force of the said last-mentioned statute the said writing-obligatory in the declaration mentioned is utterly void, and this the said Samuel is ready to verify wherefore he prays judgment if he

3d Plea, in pursuance of unlawful agreement.

3. Mod. 35.

ought

ought to be charged with the said debt by virtue of the said writing-obligatory, &c.

S. MARRYATT:

The replication to each of the special pleas averred that the bond was given for a just debt, and traversed the usurious agreement upon which issues were joined. Mr. Marryatt having been consulted on the validity of the above bond before any action was brought upon it, gave the following opinion:

I am clearly of opinion, that as the money for which the bond was given is not also secured upon the estate held, or any other property in Ireland, or the West Indies, the bond is not protected by the statute of the 14th of the present reign, ch. 79, and consequently is invalid by the stat. of *Ann.* If the bond should be put in suit, Mr. Spann must demand *oyer*, and set out the condition for payment of six pounds *per cent.* and then he may demur or plead the reservation of more than five *per cent.* in avoidance of the security.

S. MARRYATT.

I still adhere to the opinion I originally gave, that the bond in question is invalid, now this being two (a) opinions of the very first respectability at the bar have, as I am informed, been given to the contrary upon it is very odd. The act of the 14th of the present reign, although it legalizes securities of a particular description only, does not go to the length of expressly invalidating such a security as the present; but I think that ~~that act~~, not having rendered such contract efficacious, the prohibitions of the 12th *Ann* attaches on it, as the bond was executed in England; even had the *condition* under which the bond was, been made abroad, it appears from the case of Lord Ranelagh and Sir John Chanterle, 2 Vern. 395 (which I understand is correctly quoted *there*, notwithstanding the different statement of the order in chancery, precedents 125) and that of Connoir, the earl of B. Lamont, 2. Atk. 382, that the interest to be taken will never hold if depend upon the place where the security was executed. Some additional arguments though not very conclusive ones; in support of this doctrine, may be drawn from the

determinations that legacies are to be paid according to the currency of the country where the will is made, 1 P. Williams, 696 2 P. Williams, 88. 2 Aik. 495. 2 Brown's Ch. Cases, 38; but it does not seem necessary in this instance to discuss how the case would have stood had the agreement under which the bond was given been made abroad, because the agreement under which it actually was given, so far as respects Mr. Spann's suretyship at least, was made in England, and all the parties were English subjects; it will, therefore, be of the first importance to Mr. Spann to have it ascertained at the trial that the bond in question was executed in England, and the plea of *non est factum* making it necessary for the plaintiff to call one of the attesting witnesses, the place of its execution will of course come out in his examination. It will also be proper for Mr. Spann to pick up and be prepared with proofs of receipts for the interest he has paid at the rate of six pounds *per cent.* which will shew that the reservation of that interest in the bond was not a mistake of the scrivener, as it is termed, contrary to the intent of the parties, *vide* 1. Hawkf. Leach's edit. 531 and several cases there referred to. An acceptance of six pounds *per cent.* entered by the plaintiff, will clearly shew that there was no mistake in 'Fact,' and if the 'Law' was mistaken, the rule applies that "*Ignorantia legis non excusat*," per Butler, J. in Lowry and Bourdieu, Doug. 454) any correspondence that Mr. Spann may be in possession of, shewing that the agreement for his becoming Mr. Phillips's surety was made in England, should also be sent to London, as the production of them at the trial may be material. I am recommending no other step at all necessary to the defence of this action, and at the plaintiff's trial, he can never get relief in equity against Mr. Spann, on account of his standing in the situation of a surety, Con. Dig. title Chan. 4 D. 15.

S. MARRYATT.

(n) Mr. Bearcroft and Mr. Mansfield.



LONDON,

LONDON, to wit. William Bradley, late of, &c. esquire, Declaration in
and Tabitha his wife, were summoned to answer to Josiah Ray- common pleas
ment, in a plea that they render to him eight hundred pounds of in debt on bond,
lawful, &c. which they owe to and unjustly detain from him, &c. at suit of obli-
and thereupon the said plaintiff, by J. B. his attorney, says, that gee, against a
whereas the said Tabitha, while she was sole, and before her in- man and his
termarriage with the said W. to wit, on the twenty-eighth of wife, who, be-
October, A. D. 1747, at L. &c. by her then name of Tabitha fore her inter-
Todd, of, &c. widow, her certain writing-obligatory, sealed with marriage, enter-
her seal, be aue held and firmly bound unto the said plaintiff ed into the
in the sum of eight hundred pounds, to be paid to the said plaintiff bond.
when she should be thereto afterwards requested: Yet the said T. whilst she was sole, and the said W. and T. after the marriage celebrated between them, although often requested, have not, nor hath either of them yet paid the said eight hundred pounds, or any part thereof, to the said plaintiff, but to pay the same to him they, and each of them have, and hath hitherto wholly refused, and still do refuse to the said plaintiff his damages of pounds.
Suit, &c. (*Profert of the bond.*)

Drawn by MR. WARREN.

<p>MUIR, ESQUIRE, ADMINISTRATOR, &c. } <i>as assign</i></p>	<p>MIDDLESEX, } to wit. Hutchinson</p>	<p>Declaration by an administrator, <i>de bonis non</i>, a- against an exe- cutrix of an exe- cutrix, alledging a <i>devastavit</i> in the first execu- tix.</p>
<p>LINSY, WIDOW, EXECUTRIX, &c. } administrator of all and singular the goods and chattels, rights and credits, which were of F. M. deceased, who died intestate, which were not administered by C. M. widow and relict of the said F. M. also deceased, who was administratrix of all and singular the goods and chattels, rights and credits, of the said F. M. complains of Sophia Linsy, executrix of the last will and testament of E. H. widow, deceased, who was executrix of the last will and testament of R. H. her late husband, also deceased, in a plea that she render to the said plaintiff four thousand four hundred and sixty pounds which the unjustly detains from him; for that whereas the said R. M. in his lifetime, and in the lifetime of the said F. M. to wit, on, &c. at, &c. by his certain writing-obligatory, sealed with his seal, (<i>profert in curia</i>), acknowledged himself held and firmly bound unto the said F. M. in his lifetime, in the said four thousand four hundred and sixty pounds, to be paid to the said F. M. or his administrators, when he should be thereto afterwards requested, and for the true payment thereof he bound himself and his administrators by the same writing-obligatory: And the said plaintiff in fact saith, that after the decease of the said R. H. to wit, on, &c. at, &c. divers goods and chattels, which were the said R. M.'s at the time of his death, to the value of five thousand pounds, came to the hands of the said E. H. to be administered, and that the said E. H. in her lifetime, afterwards, to wit, on, &c. at, &c. did convert the said goods and chattels to her own use; nevertheless the said R. H. in his lifetime, and the</p>	<p>Muir, esquire, ad- ministratrix of all and singular the goods and chattels, rights and credits, which were of F. M. deceased, who died intestate, which were not administered by C. M. widow and relict of the said F. M. also deceased, who was administratrix of all and singular the goods and chattels, rights and credits, of the said F. M. complains of Sophia Linsy, executrix of the last will and testament of E. H. widow, deceased, who was executrix of the last will and testament of R. H. her late husband, also deceased, in a plea that she render to the said plaintiff four thousand four hundred and sixty pounds which the unjustly detains from him; for that whereas the said R. M. in his lifetime, and in the lifetime of the said F. M. to wit, on, &c. at, &c. by his certain writing-obligatory, sealed with his seal, (<i>profert in curia</i>), acknowledged himself held and firmly bound unto the said F. M. in his lifetime, in the said four thousand four hundred and sixty pounds, to be paid to the said F. M. or his administrators, when he should be thereto afterwards requested, and for the true payment thereof he bound himself and his administrators by the same writing-obligatory: And the said plaintiff in fact saith, that after the decease of the said R. H. to wit, on, &c. at, &c. divers goods and chattels, which were the said R. M.'s at the time of his death, to the value of five thousand pounds, came to the hands of the said E. H. to be administered, and that the said E. H. in her lifetime, afterwards, to wit, on, &c. at, &c. did convert the said goods and chattels to her own use; nevertheless the said R. H. in his lifetime, and the</p>	<p>the said</p>

said E. H. in her lifetime, after the decease of the said R. H. and the said S. L. since the death of the said R. H. and E. H. although often requested, &c. have not, nor hath any or either of them paid the said four thousand four hundred and sixty pounds to the said Francis M. in his lifetime, or to the said C. M. after the death of the said F. M. (to which said C. M. after the decease of the said F. M. to wit, on, &c. at, &c. in, &c. administration of all and singular the goods and chattels, rights and credits, which were of the said F. M. at the time of his death, was duly committed by John, by divine providence archbishop of Canterbury, primate of all England, and metropolitan,) or to the said plaintiff after the respective deaths of the said F. M. and C. M. (to which said plaintiff, after the decease of the said C. M. to wit, on &c. at, &c. administration of all and singular the goods and chattels, rights and credits, which were of the said F. M. at the time of his death, left unadministered by the said C. M. was duly committed by John, by Divine Providence, at the time of granting thereof, and yet archbishop of Canterbury, primate of all England, and metropolitan), but the said R. H. in his lifetime, and the said E. H. after his decease, and the said S. L. after the respective deceases of the said R. H. and E. H. refused to pay the same to the said F. M. in his lifetime, and to the said C. M. after his decease, and to the said plaintiff, as administrator as aforesaid, after the respective deceases of the said F. M. and C. M. and the said S. L. still doth refuse to pay the same to the said plaintiff, to the damage of the said plaintiff of twenty pounds, and therefore he brings suit, &c.; and the said plaintiff brings here into court the letters of administration aforesaid, granted by the said archbishop John to the said C. M. as aforesaid, and also the said letters of administration of the said goods and chattels of the said F. M. not administered by the said C. M. in her lifetime, granted by the said archbishop Thomas to the said plaintiff as aforesaid, the respective dates whereof are the days and years in that respect above-mentioned.

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Michaelmas Term, 30. Geo. III.

[The declaration was upon a bond for seven hundred and forty-one pounds four shillings, dated the twentieth of February, 1788.]

Pleas, non est factum, set off, and release to debt on bond for payment of money.

STUDD } AND the said Edward, by Josiah Fitzwilliam
at suit of } Vandercom his attorney, comes and defends the
GARDNER. } wrong and injury, when, &c. and prays *oyer* of the
said writing-obligatory, and it is read to him; &c. ; he also prays
oyer of the condition of the said writing-obligatory, and it is read to
him in these words, to wit, " the condition of this obligation is
such, that if the above bounden Edward Studd, his heirs, execu-
tors, or administrators, or either of them, shall and do well and
truly pay, or cause to be paid unto the above named Frederick
Gardner, his executors, administrators, or assigns, the full sum
of three hundred and seventy pounds twelve shillings of good and
lawful

PLEA.—SET OFF—RELEASE.

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lawful money of Great Britain, together with lawful interest for the same, to commence twelve months after the above date, on or before the twentieth of February 1788, then this obligation to be void, or else to be and remain in full force and virtue," which being read and heard, the said Edward says, that he ought not to be charged with the said debt by virtue of the said writing-obligatory; because he says that the said writing-obligatory is not his deed; and of this he puts himself upon the country, &c. : And for further plea in this behalf the said Edward, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that he ought not to be charged with the said debt by virtue of the said writing-obligatory; because he says that at the time of the commencement of this action there was due and owing from the said Edward to the said Frederick, by virtue of the said writing-obligatory and the condition thereof, the sum of two hundred and fifty-nine pounds five shillings and five pence and no more; and that the said Frederick, at the time of the commencement of this action, was and still is indebted to the said Edward in a much larger sum of money than the money so due and owing from the said Edward to the said Frederick, by virtue of the said writing-obligatory and condition, to wit, in the sum of four hundred and twenty pounds upon the balance of an account before then stated, adjusted, and settled, between the said E. and the said F. to wit, at L. aforesaid, in the parish and ward aforesaid, out of which said sum of four hundred and twenty pounds the said Edward is ready and willing, and hereby offers to set off and allow to the said F. so much money as will be sufficient to satisfy all the money due by virtue of the said writing obligatory and condition, and all damages sustained by occasion of detaining the same, according to the form of the statute in such case made and provided; and this the said Edward is ready to verify; wherefore he prays judgement if he ought to be charged with the said debt by virtue of the said writing-obligatory, &c. : And for further plea in this behalf the said Edward, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that he ought not to be charged with the said debt by virtue of the said writing-obligatory; because he says that after the making of the said writing-obligatory, and before the commencement of this action, to wit, on the twenty sixth of August, A. D. 1789, at L. aforesaid, in the parish and ward aforesaid, by a certain writing of release then and there made and delivered by the said F. to the said Edward, which said writing of release, bearing date the day and year aforesaid, and sealed with the seal of the said F. the said Edward now brings here into court, reciting, "that by a certain agreement in writing, bearing date on or about the twenty-third of February 1788, made and entered into between the said F. of the one part, and the said Edward, second mate of the ship Manship, in the service of the honourable East India Company, of the other part, the said F.

2d Plea. Set off
on balance of
accounts.

3d Plea. Release.

DEBT ON BOND.—PLEA, RELEASE,

had warranted unto the said Edward a nett profit of seventy pounds *per cent.* on the amount of sundry stationary goods, shipped or to be shipped by the said F. on board the said ship *Manship* for her then intended voyage to Calcutta, in Bengal, to be stowed and carried by the said Edward on board the said ship to Calcutta, and there sold and disposed of; and that it had been also agreed by the said F. that in case the said Edward should not be able to sell or dispose of the said stationary goods to the amount of the said seventy pounds *per cent.* profit thereon, that then the said F. should make good the deficiency, or such sum as the said sales should fall short of the said seventy pounds *per cent.* profit to the said Edward on his arrival in England; and the said Edward had thereby covenanted, promised, and agreed that he would take the before mentioned stationary goods on board the said ship to Calcutta, and there sell and dispose thereof for the best price he could get for the same, and pay the charges of insurance of the said goods out and home, and after his arrival pay to the said F. the profit and advance over and above seventy pounds *per cent.* producing at the same time a just account of the sales thereof; and lastly that it had been thereby agreed by the said parties, that immediately on the return of the said Edward from the East Indies to London, the account between them relative to the aforesaid stationary goods should be justly stated and finally settled and adjusted by the said parties agreeably to the foregoing agreement:” And also reciting, “that in pursuance of the said agreement the said F. had shipped on board the said ship, for or on account of the said Edward, stationary goods to the amount in the whole of five hundred and fifty pounds, stating invoice price; and that the said Edward had thereupon at the same time paid and satisfied the said F. the sum of one hundred and eighty-seven pounds part thereof, and had made and executed to the said F. a bond, bearing date on or about the twenty-third of February 1788, under the hand and seal of the said Edward, in the penalty of seven hundred and thirty-six pounds, or thereabouts, with a condition thereunder written for payment of the sum of three hundred and sixty-three pounds, or thereabouts, being the residue of the said invoice price, within such time as therein is mentioned; but that inasmuch as two cases of the said goods had been soon afterwards returned to the said F. he not being able to get them shipped on board the said ship, amounting to the sum of one hundred and twenty pounds, the said F. had undertaken and promised to write off from the said bond so much as would reduce the money due on the said bond to the sum of two hundred and fifty pounds and no more:” And further reciting, “that the said Edward had proceeded on his said voyage in the said ship *Manship* to Calcutta, and there, in pursuance of his said agreement, had sold and disposed of them for the best prices he could get for the same, and having since arrived in England had laid before the said F. a just and true account of the sales thereof, which the said F. did by the said writing of release acknowledge, amounting to no more in the whole than the sum of four hundred and thirty-seven pounds fifteen shillings and two pence,

AND DEMURRER TO PLEA—REPLICATION.

pence, whereby a considerable loss had arisen upon the said goods, and that by an account that day stated, settled, signed, and allowed by and between the said Edward and F. there was justly and truly due and owing to the said Edward from the said F. the sum of five hundred and seventy-four pounds two shillings and six pence, which the said F. thereby also acknowledged, and which said balance the said Edward had, in consideration of the great loss arising to the said F. in the said transaction, consented to reduce to the sum of four hundred and twenty pounds; for payment of which said sum of four hundred and twenty pounds the said F. had agreed to release to the said Edward the said bond so entered into by him for and in payment of two hundred and fifty pounds, being the sum thereon remaining due as aforesaid, and for the remaining one hundred and seventy pounds to ship or deliver stationary goods to the order of the said Edward, the said F. in consideration of the premises, by the said writing of release remitted, released, and for ever acquitted and discharged the said recited bond or obligation (being the same writing-obligatory as is now brought here into court), and the sum and sums of money, both principal and interest, thereby secured, and by the said writing of release exonerated the said Edward therefrom, and from every part and parcel thereof, and also of and from all and all manner of action and actions, cause and causes of action, suits, bills, bonds, writings-obligatory, debts, damages, and demands whatsoever, which against the said Edward the said F. ever had, or might hereafter have or claim by reason of the said recited bond or agreement, or either of them, or any other matter, cause, or thing whatsoever from the beginning of the world to the day of the date of the said writing of release, as by the said writing of release, reference being thereto had, will, amongst other things, more fully appear;” and this the said Edward is ready to verify; wherefore he prays judgment if he ought to be charged with the said debt by virtue of the said writing-obligatory, &c.

SAMUEL MARRYATT.

And the said F. as to the said plea of the said Edward by him first above pleaded, and whereof he hath put himself upon the country, the said Frederick doth the like: And the said F. as to the said plea of the said Edward by him secondly above pleaded in bar, saith, that he, by reason of any thing by the said Edward above in that plea alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him; because he says that he the said F. was not nor is indebted to the said Edward in manner and form as the said Edward hath above in that plea alledged; and thus the said F. prays may be enquired of by the country, &c.; and the said Edward doth the like: And as to the said plea of the said Edward by him lastly above pleaded in bar, the said F. saith, that he by reason of any thing by the said Edward above in that plea alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him; to which said

Replication,
fuc.

Demurrer.

Demurrer, for that it does not appear that the bond mentioned in the release, and that mentioned in the declaration are one and the same, or that the said writing-obligatory is discharged by the release.

plea, in manner and form as the same is above pleaded, the said F. is not under any necessity, nor obliged by the law of the land to answer; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf, the said F. prays judgment and his debt aforesaid, together with his damages, by occasion of the detaining of that debt, to be adjudged to him, &c.: And for cause of this demurrer in law, according to the form of the statute in such case lately made and provided, shews to the court here these causes following, to wit, for that the said Edward hath not in and by his said plea averred, shewn, or alledged that the said writing-obligatory in the said release mentioned, and the said writing-obligatory in the said declaration mentioned, are one and the same writing-obligatory; nor doth it in any wise appear that the said F. hath in and by the said release in the said plea mentioned, released and discharged the said Edward from the said writing-obligatory in the said declaration mentioned, or from the payment of the money in the said bond contained; and for that the said plea is in various other respects defective, informal, and insufficient.

W. BALDWIN.

To the above demurrer Mr MARRYATT drew a rejoinder, and added the following opinion:—

~~It does not appear to me that the plea demurred to is at all exceptionable on the ground assigned for cause, viz. that the bond thereby shewn to have been released is not averred to be the same as the plaintiff declared upon; for in stating the release of the bond recited it is expressly added, being the same writing obligatory as is now brought hereinto court. This would, in my opinion, amount to a posi-~~

~~tive allegation of identity, if such an allegation were requisite, the term being, having been repeatedly held a sufficient averment, even in writs, must a fortiori be so in civil proceedings: but it strikes me that it was not absolutely necessary to have pleaded a particular acquittance of the bond in question, as the release is shewn to contain other general words sufficiently comprehensive to defeat the action.~~

S. MARRYATT.

Trinity Term, 32. Geo. III.

Declaration in debt on bond, by husband and wife, on bond before marriage.

MORRIS AND WIFE, }
against
GRIFFITHS.

HEREFORDSHIRE, to wit. Samuel Morris and Elizabeth his wife, complain of John Griffiths, being, &c. of a plea that he render to the said plaintiffs the sum of five hundred pounds of lawful money of Great Britain, which he owes to and unjustly detains from them; for that whereas the said John before the intermarriage of the said Elizabeth with the said Samuel, to wit, on the eleventh day of August, in the year of Our Lord 1767, at Leominster, in the county of Hereford, by his certain writing obligatory, sealed with his seal, and to the court of our lord the king now here shewn, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound to the said Elizabeth by her then name and description of Elizabeth Gritton, of the parish of Madley, in the said county of H. spinster, in the sum of five hundred pounds, to be paid to the said Elizabeth when he should be thereto afterwards requested; nevertheless

PLEA—SOLVIT POST DIEM.

nevertheless the said John hath not, although often requested, paid to the said Elizabeth before her intermarriage with the said Samuel, or to the said plaintiffs, or either of them since the said intermarriage, the said sum of five hundred pounds, or any part thereof, but hath hitherto wholly refused so to do, and still doth refuse to pay the same to the said plaintiffs, to the damage of the said plaintiffs of five hundred pounds, and thereof they bring suit, &c. pledges, &c.

And now at this day, that is to say, on Wednesday next after eight days of St. Hilary, in this same term, until which day the said John had leave to imparl to, the said bill, and then to answer the same, &c. as well the said plaintiffs by their said attorney, as the said John Griffiths, by Francis Eves, his attorney, do come before our lord the king, at Westminster, and the said John Griffiths defends the wrong and injury, when, &c. and craves oyer of the said writing-obligatory, and it is read to him in these words, to wit, [set out the obligation of the bond]: And the said John Griffiths also prays oyer of the conditions of the said writing-obligatory, and it is read to him in these words, to wit: Whereas John Gritton, late of the parish of Madley, in the county of Hereford, deceased, lately died intestate, and since his death letters of administration of all and singular the goods, chattels, and credits are granted and committed to the above bounden John Griffiths, and during the minority and non-age, and for the life and benefit of the above-named Elizabeth Gritton, the daughter of the said John Gritton deceased; and whereas the said John Griffiths is come to an agreement with James Gritton, the grandfather and next friend of the said Elizabeth Gritton, to pay to the said Elizabeth Gritton at such time as she shall arrive at the age of twenty-one years, or on the day of her marriage, which shall first happen, the sum of two hundred and fifty pounds of lawful money of Great Britain, clear of all and all manner of deductions whatsoever, and in case of her death before she shall arrive at such age, or be married as aforesaid, then to pay the said sum of two hundred and fifty pounds to the legal representatives of the said E. G. clear of all deductions: Now the condition of the above-written obligation is such, that if the above-bounden John Griffiths, John Weaver, and Edward Jones, or either of them, their, or either of their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid to the said E. G. her executors, administrators, and assigns, the sum of two hundred and fifty pounds of good and lawful money of Great Britain, when she shall attain her age of twenty-one years, or on the day of her marriage, which shall first happen; and in case the said E. G. shall happen to die before she shall attain such her age of twenty-one years, or be married as aforesaid, that then if the said J. G. J. W. and E. J. or either of them, their, or either of their heirs, executors, or administrators, do and shall pay, or cause to be paid to the legal representative or representatives of the said E. G. the said sum of two hundred and fifty pounds clear of all deductions: And also

Imparlanee from
Trinity to Hilary
term.
Plea, craves
oyer of the
bond, which
with a special
condition
maintain
instruct plaintiff
Elizabeth de
ing her infant
till marriage
and then to pay
her 25*l.*
Solvit post
according to the
statute.

that if the said J. G. shall and will find and provide for the above-named E. G. until she shall arrive at such her age of twenty-one years, or day of marriage as aforesaid, good, wholesome, and sufficient meat, washing, lodging, and all other necessaries; and also shall take care to have the said E. G. educated and instructed in the best way and manner that he can, fitting for a person of her degree; that then the above written-obligation shall be void and of none effect, or else to remain in full force and virtue, *which being read and heard*, the said defendant saith, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him the said J. G.; because he says, that after the sealing and delivery of the said bond, and before the said Elizabeth attained the age of twenty-one years, to wit, on the fifth day of July, in the year of Our Lord 1775, to wit, at L. aforesaid, in the county aforesaid, the said E. intermarried to and took to husband the said S. and that he the said J. G. from the time of the sealing and delivery of the said writing-obligatory, until the said marriage of the said E. with the said S. did find and provide for the said E. good, wholesome, and sufficient meat, drink, washing, lodging, and all other necessaries, and had the said E. educated and instructed in the best way and manner he the said J. G. could, fitting for a person of her degree, according to the tenor and effect, true intent and meaning of the said condition of the said bond, to wit, at L. aforesaid, in the county aforesaid; and the said J. G. in fact further says, that the said J. G. *did*, after the said eleventh day of August, in the said year of Our Lord 1767, in the said writing-obligatory mentioned, and after the said intermarriage of the said E. with the said S. and before the exhibiting of the bill of the said plaintiffs, to wit, on the twenty-fifth day of January, in the year of Our Lord 1788, *pay to the said plaintiff the said sum of two hundred and fifty pounds in the said condition of the said writing-obligatory mentioned, according to the form of the statute* in such case made and provided, to wit, at L. aforesaid, in the county aforesaid; and thus he the said defendant is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him the said defendant; And for further plea in this behalf, the said defendant, by leave, &c. *adlio non*; because he says, that after the making and executing the said bond, and before the commencement of this suit, to wit, on the fifth day of July, in the said year of Our Lord 1775, the said E. married and took to wife the said S. to wit, at L. aforesaid, in the county aforesaid; and that the said John in fact further says, that he the said John had the said E. educated and instructed in the best way and manner that he could, fitting for a person of her degree, and that from the time of making and executing the said bond, until the day of the marriage of the said E. with the said Samuel, he the said John did find and provide for the said E. good, wholesome, and sufficient meat, drink, washing, lodging, and all other necessaries, to wit, at L. aforesaid, in the county aforesaid; and the said defendant in fact further says, that the said defendant *did*, after the said eleventh day of August, in the

ad Plea, that
defendant main-
tained, &c.
plaintiff Eliza-
beth till her
marriage, &c.
and afterwards
paid a sum of
money in sat-
isfaction, which
plaintiffs ac-
cepted.

PLEA—AGREEMENT.

year of Our Lord 1767, in the said writing-obligatory mentioned, and after the said intermarriage of the said E. with the said S. and before the exhibiting of the bill of the said plaintiffs, to wit, on the twenty-fifth day of January, in the year of Our Lord 1788, *pay to the said plaintiffs* the said sum of two hundred and fifty pounds in the said condition of the said writing-obligatory mentioned, which said last-mentioned sum of two hundred and fifty pounds the said plaintiffs *took and accepted of and from the said John, in full satisfaction and discharge of the said writing-obligatory, and of all sums of money due thereupon, to wit, at L. aforesaid, in the county aforesaid;* and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.: And for further plea in this behalf the said John, by leave, &c. *adjo non*; because he says, that after the making and executing the said bond, and before the commencement of this suit, to wit, on the fifth day of July, in the year of Our Lord 1775, the said E. married and took to husband the said Samuel, to wit, at L. aforesaid, in the county aforesaid; and the said John in fact further says, that he the said John had the said E. educated and instructed in the best way and manner that he could, fitting for a person of her degree, and that from the time of making and executing the said bond, until the day of the marriage of the said E. with the said S. he the said John did find and provide for the said E. good, wholesome, and sufficient meat, drink, washing, lodging, and all other necessities, to wit, at L. aforesaid, in the county aforesaid; and the said John in fact further says, that after the said intermarriage of the said E. with the said Samuel, he the said John did before the commencement of this suit, to wit, at divers days and times before and upon the twenty-fifth day of January, in the year of Our Lord 1788, at L. aforesaid, in the county aforesaid, pay to the said plaintiffs divers sums of money, amounting in the whole to a large sum, to wit, to the sum of two hundred and eighty-one pounds eighteen shillings for and on account of the said money due and owing on the said bond; and that the said plaintiffs then and there, to wit, on the day and year last aforesaid, at L. aforesaid, in the county aforesaid, accounted together with the said John of and concerning the said sums of money so paid by the said John, and also divers other sums of money before that time due and owing to the said John, as well for money by him before that time paid, laid out, and expended on account of the said E. and at her special instance and request, and for money before that time had and received by the said E. to the use of the said John, as also for other money before that time due and owing from the said S. to the said John, for cattle and goods sold, and for money paid by the said John for the said S. at his special instance and request, and for money had and received by the said S. to the use of the said John, and for money due and owing from the said S. to the said John upon an account stated between them, and upon that accounting it was found that the said several sums of money so paid on account

3d Plea, a special statement of accounts between plaintiff Samuel and defendant, and agreement, allow the amount of the bond out of the balance due defendant.

of the said bond, and contained in the said account so stated between the said plaintiffs and the said defendant, and then due to the said defendant, exceeded the said sum of two hundred and fifty pounds in the said condition of the said writing-obligatory mentioned; whereupon it was then and there agreed by and between the said plaintiffs and the said defendant, that out of the said sums of money so paid by the said defendant, and due and owing to the said defendant upon the said account stated, there should be taken, accepted, received, and retained by the said S. the sum of two hundred and fifty pounds, in full satisfaction and discharge for the said sum of two hundred and fifty pounds in the said condition of the said writing-obligatory mentioned, and that no interest should be paid by the said John, or taken by the said plaintiffs of or upon the same, and that the said plaintiffs should be for ever afterwards discharged the said sum of two hundred and fifty pounds so allowed from the said sums of money so paid by the said John, and due and owing upon the said account stated; and that the said John should be for ever afterwards discharged from the said writing-obligatory, and from all sums of money then due by virtue thereof: And the said John in fact says, that the said John then and there in pursuance of the said account and agreement remitted to and acquitted and discharged the said plaintiffs, and the said plaintiffs then and there accepted and received of the said John his said remittance, acquittal, and discharge of the said sum of two hundred and fifty pounds so allowed and retained out of the sums of money to paid by and due and owing to him in the said account stated, in full satisfaction and discharge of the said bond; and this he said John is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain this aforesaid action thereof agt him, &c.

V. GIBBS.

Replication to
first plea, that
defendant did
not pay, &c. to
2d, same; 3d,
it was not
agreed.

And the said Samuel and Elizabeth, as to the said plea of the said John by him first above pleaded in bar, say, that they, by reason of any thing in that plea above alledged, ought not to be barred from having or maintaining their aforesaid action thereof against him the said John, because they say, that the said John *did not pay* to the said Samuel and Elizabeth, or either of them, the said sum of two hundred and fifty pounds, or any part thereof, in manner and form as the said John hath above in his said first plea alledged, and this they say may be enquired of by the country, &c.: And the said Samuel and Elizabeth, as to the said plea of the said John, by him secondly above pleaded in bar, say, that they, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their aforesaid action thereof against the said John, because they say, that the said John *did not pay* to the said S. and E. or either of them, the said sum of two hundred and fifty pounds, or any part thereof, in manner and form as the said John hath above in his second plea alledged, and this they

they also pray may be enquired of by the country, &c.: And the said S. and E. as to the said plea of the said John by him lastly above pleaded in bar, say, that they, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their aforesaid action thereof against him; because protesting that the said John did not pay to the said plaintiffs any sum of money for and on account of the said money due and owing on the said bond; and protesting that they the said S. and E. did not account together with the said John, nor did the said several sums of money in that plea mentioned exceed the said sum of two hundred and fifty pounds, in the said condition of the said writing-obligatory mentioned, as the said John hath in his said last plea alledged; for replication in this behalf the said plaintiffs say, that *it was not agreed by and between the said plaintiffs and the said defendant in manner and form as the said defendant hath in his said last plea above alledged*, and thus they the said S. and E. pray may be enquired of by the country, &c.

And the said John as to the said *several pleas* of the said S. and E. by them respectively above in reply pleaded to the said *pleas* of *Rejoinder, first* the said John, by him above pleaded in bar, and whereof they have *liber* to all the *replications* prayed may be enquired of by the country, he the said John *doth the like*; therefore to try the several issues above joined, let a jury come before our lord the king, at Westminster, on next after *the*, by whom, &c. and when either, &c. to recognize, &c. because as well, &c. the same day is given to the said parties *dicta*, &c.

21. Geo. III.

LANCASHIRE, to wit. S. L. complains of R. L. and S. C. being, &c. of a plea that they render to him the said plaintiff the sum of one hundred pounds of lawful money of Great Britain, which they owe to him unjustly detained from him; for that whereas the said defendants on, &c. or, &c. by their certain writing-obligatory, sealed with their respective seals, and now shewn to the court of our said lord the king, before the said manifesture, the date whereof is the day and year last aforesaid, acknowledged themselves to be held and firmly bound unto one S. L. in his lifetime, now deceased, and whom the said S. L. the now plaintiff hath survived, together with him the said S. L. the now plaintiff in the said sum of one hundred pounds above demanded, to be paid to the said S. L. deceased, and S. L. the now plaintiff, when they the said defendants should be thereto afterwards requested; yet the said defendants, although often requested, have not as yet paid the said sum of one hundred pounds above demanded, or any part thereof, to the said S. L. deceased, or S. L. the now plaintiff, or either of them, in the lifetime of the said S. L. deceased, or to the said S. L. the now plaintiff, since the death of the said S. L. deceased; but to pay the same, or any part thereof, to them or either of them,

Declaration,
suit of the sur-
vivor of two
obligees against
two obligors for
payment of money.

them, they the said defendants have, and each of them hath hitherto wholly refused, and still doth refuse to pay the same, or any part thereof, to the said S. L. the now plaintiff, to the damage of the said S. L. the now plaintiff of ten pounds, and therefore he brings his suit, &c.

Plea, praying
oyer of the bond
and condition,
shews it to be
on the demise of
a coal-mine by
plaintiffs to de-
fendants, to be
worked by
them, to in-
demnify them
against any da-
mage to be done
thereby to the
plaintiffs lands
and houses a-
bove ground,
averring that
they are not
indemnified.

And the said defendants, by A. B. their attorney, come and defend the wrong and injury, when, &c. and pray oyer of the said writing-obligatory, and it is read to them, &c. and the said defendants also prays oyer of the condition of the said writing-obligatory, and it is read to them in these words, to wit, whereas the said S. L. the elder, having out of natural affection given to his son S. L. the younger, part of the mine, bed, or vein of coals lying, being, or to be found under the surface of the estate and premises hereafter mentioned and described, they the said S. L. the elder, and S. L. the younger, have come to an agreement to and with the said defendants to demise all and every the coal lying under the said estate and premises in and by a certain indenture, tripartite, bearing date even date herewith, and made or mentioned to be made between the said S. L. the elder, of the first part, and the said S. L. the younger, of the second part, and the said defendants of the other part; after reciting as therein is recited, in consideration of the sum of five pounds of lawful money of Great Britain to the said S. L. the elder, in hand paid by the said defendants, and also in consideration of the sum of ten pounds of like lawful money, to be paid and payable to the said S. L. the younger, at the time hereinafter mentioned, they the said S. L. the elder, and S. L. the younger, did demise and lease unto the said defendants, their executors, administrators, and assigns, all that mine, bed, delf, or vein of coals, called, &c. lying, being, or to be found under the surface and within the bowels of a certain estate belonging to and in the possession of the said S. L. the younger, situate, lying, and being in, &c. together with the several liberties, privileges, powers, and authorities for the working, raising, getting, and disposing of the same coals as therein is particularly mentioned, to hold the same to the said defendants, their executors, administrators, and assigns, from the day next before the day of the date thereof, for and during the term, time, space, and unto the full end and term of fourteen years then next ensuing, or so long thereof as coals might be got to advantage, under and subject nevertheless to the payment of the yearly rent of one shilling, at and upon the twenty-fifth day of December if demanded, as in and by the said recited indenture, reference being thereto had, may more fully and at large appear: And whereas it is agreed between the parties thereto, that if any damage or trespass shall be done upon or to a certain piece or parcel of land, and the buildings thereon erected, being part and parcel of a certain close or piece of land called, &c. now divided from the other part thereof, and lying and being on the east-side of the same close of land called, &c. and containing twelve roods of therapouts, reasonable satis-
faction

faction should be made to the said S. L. the elder, and S. L. the younger, their executors, administrators, and assigns, by the said defendants, their executors, administrators, and assigns; and it is farther agreed, that the said S. L. the younger, shall work and be employed by them the said defendants, their executors, administrators, and assigns, in such manner and upon such wages, terms, and conditions as are hereafter mentioned, during the said term granted in and by the said recited indenture, or so much and such part thereof as the said colliery shall continue to be worked; the condition therefore of the within written obligation is such, that if the within bound defendants, their heirs, executors, administrators, and assigns, or any of them, do and shall when and so soon as two hills or eyes shall be fully sunk down to the mine or vein of the coal hereinbefore mentioned, ready for getting and working the said coal, well and truly pay, or cause to be paid to the said S. L. the younger, his executors, administrators, and assigns, the sum of ten pounds of lawful money of Great Britain, for and as the consideration money for his part or share of the said mine, bed, delf, or vein of coals, without fraud or further delay, and if also the said defendants, their heirs, executors, administrators, and assigns, do and shall from time to time, and at all times during the said term, granted in and by the said recited indenture, or so much thereof as the said defendants, their executors, administrators, and assigns shall continue to work and get the said mine, bed, delf, or vein of coals, well and truly pay, or cause to be paid unto the said S. L. the elder, and S. L. the younger, their heirs, executors, administrators, and assigns, all such trespasss and damage as shall and may be committed, permitted, or suffered in and upon the said piece or parcel of ground, being part and parcel of a certain close of land called, &c. which is part of the said estate and premises hereinbefore mentioned, and said to be situate in, &c. and in the possession of the said S. L. the elder, or the buildings thereon erected, for and on account or by reason or means of the working and carrying on the said colliery, or vending, selling, and disposing of the said coals, such said trespasss and damage, is to be adjudged of and ascertained by two indifferent persons, the one to be elected and named by the said S. L. the elder, and the said S. L. the younger, their heirs, executors, administrators, and assigns, and the other to be elected and named by the said defendants, their heirs, executors, administrators, and assigns, and so to be determined from time to time as occasion shall require, and also the said defendants, their executors, administrators, and assigns, do and shall from time to time, and at all times during the said term before-mentioned, or so much thereof as the said colliery should be carried on, daily and every day employ the said S. L. the younger, upon the hill or hills, bank or banks of the said colliery, in some station or branch of the said colliery business, such as shall be found needful and necessary by the said defendants, their executors, administrators, and assigns, at and for the wages of nine shillings a week, he the said S. L., working the usual hours in the day in a sufficient and workman-

like

like manner, and not being absent at any time or times; but in case he shall absent himself or fall sick at any time or times during the continuance of the said colliery concern, the said S. L. the younger, is to be abated a proportionable part of his wages, according to the time of his absence or being sick as aforesaid, then the within writing-obligatory to be void, otherwise of force, which being read and heard, the said defendants say *ad hoc non*; because they say that they the said defendants did, when and so soon as two hills or eyes were fully sunk down to the mine or vein of coal hereinbefore mentioned for working the said coal, to wit, on, &c. at, &c. in, &c. well and truly pay to the said S. L. the younger, the sum of ten pounds of lawful money of Great Britain, for and as the consideration money for his part or share of the said mine, bed, delf, or vein of coals without fraud or delay: And the said defendants further say, that during the said term granted by the said indenture recited in the said condition of the said writing-obligatory, no trespass or damage of any kind hath been committed, permitted, or suffered in and upon the said piece or parcel of land, being part and parcel of the said close of land, called &c. and in the said condition particularly described or the buildings thereon erected, for or on account or by reason or means of the working and carrying on of the said colliery, or vending, selling, and disposing of the said coals: And the said defendants further say, that they the said defendants did from time to time, and at all times during the term before-mentioned from the time of making the said writing-obligatory, until the exhibiting the bill of the said plaintiff in this behalf, during so much of the said term as the said colliery was carried on, daily and every day employ the said S. L. the plaintiff, in some station or branch of the said colliery business, at and for the wages of nine shillings a week, abating only when the said S. L. the plaintiff, did through sickness or any other cause absent himself from the said work a proportionable part of the wages, according to the time of his so absenting himself as aforesaid, to wit, at, &c.; and this, &c.; wherefore, &c. if, &c.

W. WALTON.

Replication,
that the deceased obligee, the plaintiff's father, was seized in fee of premises, and devised same; plaintiff shows a grantee which was a certain part of the premises, and that persons concerned by the parties.

And the said S. L. the now plaintiff, says, that he, by reason of any thing by the said defendants in their said plea above alledged, ought not to be barred from having and maintaining his aforesaid action thereof against them; because he says that the said S. L. the elder, in the said condition of the said writing-obligatory named, before and at the time of the making of the said writing-obligatory, and from thence until and at the time of his death as hereafter mentioned, was seized in his demesne as of fee of and in the said piece or parcel of land, being part and parcel of the said close of land, called, &c. in the said condition mentioned, and also of and in certain buildings thereon erected, and being so thereof seized, he the said S. L. the elder, afterwards, to wit, on, &c. at, &c. died in seized of and in the said piece of land and buildings hereinbefore men-

mentioned, having first duly made and published his last will and testament in writing, and thereby devised the same to the said S. L. the now plaintiff, and his heirs for ever, whereby the said S. L. the now plaintiff became and was, and from thence hitherto hath been, and still is seized in his demesne as of fee of and in the said piece or parcel of land and buildings hereinbefore mentioned, to wit, at, &c.: And the said S. L. the now plaintiff, further saith, that being so seized of the said piece or parcel of land and buildings hereinbefore mentioned, afterwards, and during the said term granted in and by the said indenture in the said condition of the said writing-obligatory mentioned and set forth, and whilst the said defendants or their assigns did continue to work and get the said mine, bed, delf, or vein of coal in the said condition also mentioned, to wit, on, &c. and on divers other days and times between that day and the first day of, &c. at, &c. certain trespass and damage were committed, permitted, and suffered in and upon the said piece or parcel of land and buildings hereinbefore mentioned, for and on account, and by reason and means of the working and carrying on the said colliery in the said condition mentioned, and which said trespass or damage were afterwards, to wit, on, &c. at, &c. adjudged and ascertained by two indifferent persons, that is to say, by one A. B. elected and named by the said S. L. the now plaintiff, and one C. D. elected and named by the said defendants, who then and there awarded and ordered the said defendants to pay to the said S. L. the now plaintiff, the sum of eight pounds, as a satisfaction for such trespass and damage, whereof the said defendants afterwards, to wit, on, &c. at, &c. had notice; nevertheless the said defendants, although often requested, did not, nor would, nor did, nor would either of them well and truly pay or cause to be paid to the said S. L. the now plaintiff, the said sum of eight pounds, or any part thereof, but have and each of them hath hitherto wholly refused and neglected so to do, to wit, at, &c.; and this, &c.; wherefore, &c. and his said debt, together with his damages by him sustained on occasion of the detaining thereof, to be adjudged to him, &c.

S. MARRYATT.

And the said defendants, as to the said plea of the said plaintiff above in reply pleaded to the said plea of the said defendants by them above pleaded in bar, say, that he the said plaintiff, by reason of any thing by him in his said plea by him above in reply pleaded alledged, ought not to have or maintain his aforesaid action thereof against them the said defendants; because they say, as before, that no trespass or damage of any kind were committed, permitted, and suffered in and upon the said piece or parcel of land and buildings above-mentioned, for or on account and by reason and means of the working and carrying on the said colliery in the said condition of the said writing-obligatory mentioned; and of this they put themselves upon the country, &c.

Rejoinder, taking issue on the damage alledged.

T. BARROW.

Hilary

Hilary Term, 30. Geo. III.

Warrants of At-
torney.

Memorandum.

Declaration in
debt on bond a-
gainst an execu-
trix.

WILTSHIRE, to wit. John Laws puts in his place Mat-
thew Davies, his attorney, against Jane Duck, widow, executrix
of the last will and testament of Isaac Duck, her late husband, de-
ceased, in a plea of debt: Wiltshire, to wit. The said Jane Duck,
executrix as aforesaid, in her own person, at the suit of the said
John Laws in the plea aforesaid: Wiltshire, to wit. Be it remem-
bered that on Saturday next after eight days of St. Hilary in this
same term, before the lord the king at Westminster, comes John
Laws, by Matthew Davies his attorney, and brings into the court
of the said lord the king, before the king himself here, his certain
bill against Jane D. widow, executrix of the last will and testa-
ment of Isaac Duck, her late husband, deceased, being in the cus-
tody of the marshal of the marshalsea of the said lord the king,
before the king himself, of a plea of debt, and there are pledges
for the prosecution thereof, to wit, John Doe and Richard Roe,
which said bill follows in these words, to wit: Wiltshire, to wit.
John Laws complains of Jane D. widow, executrix of the last
will and testament of Isaac Duck, her late husband, deceased,
being, &c. in a plea that she render to the said John the sum of
one hundred and fifty pounds of lawful, &c. which she unjustly
detains from him; for that whereas the said Isaac Duck in his life-
time, to wit, on the twenty-fourth of November 1781, at War-
minster, in the said county of Wilts, by his certain writing-obli-
gatory, bearing date the day and year aforesaid, sealed with his seal,
and now shewn to the court here, acknowledged himself to be
held and firmly bound to the said John in the sum of one hundred
and fifty pounds above demanded, to be paid to the said John when
he the said J. D. should be thereto afterwards requested; yet the
said J. D. in his lifetime, and the said Jane, executrix as afore-
said since his death, have not, nor hath either of them, although
often requested, paid the said sum of one hundred and fifty pounds
above demanded, or any part thereof the said John, but to pay the
same or any part thereof the said John, the said J. D. in his
lifetime, and the said Jane D. executrix as aforesaid since his death,
have, and each of them hath hitherto wholly refused, and the said
Jane, executrix as aforesaid, still refuses so to do, to the damage
of the said John of fifty pounds; and therefore he brings suit, &c.

Judgment by
nil dicit sign-
ed the fifth of
February 1790,
de bonis testatoris,
de bonis
proprüs.

And the said Jane, executrix as aforesaid, in her own person
comes and defends the wrong and injury, when, &c. and says no-
thing in bar or preclusion of the said action of the said John,
whereby the said John remains therein undefended against the said
Jane, executrix as aforesaid; therefore it is considered, that the
said John recover against the said Jane, executrix as aforesaid, his
debt aforesaid, and also pounds for his damages, which he
has sustained as well on occasion of the detaining of that debt as
for his costs and charges by him about his suit in this behalf ex-
pended by the court of the said lord the king now here adjudged to
the said John with his assent, to be levied of the goods and chat-
tels

tels which were of the said J. D. deceased, at the time of his death, in the hands of the said Jane to be administered, if she hath so much thereof in her hands to be administered, and if she hath not so much thereof in her hands to be administered, then the said pounds, being the damages aforesaid, to be levied of the proper goods and chattels of the said Jane; and the said Jane, in mercy, &c.

Mercy.

GEORGE the THIRD, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. to the sheriff of Wiltshire, greeting: We command you, that if the goods and chattels in your bailiwick which were of Isaac Duck, deceased, at the time of his death in the hands of Jane Duck, widow, executrix of the last will and testament of the said Isaac Duck, her late husband, deceased, to be administered, you cause to be levied as well a certain debt of one hundred and fifty pounds, which John Laws, lately in our court before us at Westminster, recovered against the said Jane D. executrix as aforesaid, as also pounds, which in our said court before us were adjudged to the said John Laws for the damages which he had sustained on occasion of the detaining of that debt whereof the said Jane D. is convicted, as appears to us of record, if she hath so much thereof in her hands to be administered, and if she hath not so much thereof in her hands to be administered, then that you cause the damages aforesaid to be levied of the proper goods and chattels of the said Jane D. and have you that money before us at Westminster, on next after , to render to the said John Laws for his debt and damages aforesaid, and have you also there then this writ. Witness Lloyd Lord Kenyon, at Westminster, the twenty-third of January, in the thirtieth year of our reign.

A fieri facias et bona restatoris et return of devastavit.

STORMONT and WAY.

I HFREBY certify that there are not in my bailiwick any goods or chattels which were of the within-named Isaac Duck, deceased, at the time of his death in the hands of the said within-named Jane D. whereof I can cause to be levied the within-mentioned debt or damages, or any part thereof; and further, that the said Jane D. hath not any proper goods and chattels in my said bailiwick whereof I can cause to be levied the within-mentioned damages, or any part thereof; and I moreover certify that the said Jane D. hath sold, aliened, and wasted divers goods and chattels which were of the said Isaac D. at the time of his death to the amount in value of the said debt and damages.

Return to a fieri facias devastavit.

[The answer of , esquire, sheriff.]

For the purpose of obtaining a judgment *de bonis propriis* of the defendant, I think the most advisable course of proceeding is by action on the judgment, suggesting a *devastavit*; as a preliminary to which the sheriff must make a return to this *fi. fa. et nulla bona restatoris*. If the sheriff can

he prevailed on to return a *devastavit* also, as above (which I apprehend he not only may do safely, but well, on being indemnified) the defendant may be held to bail in such action, but otherwise she can only be served with common process, Cuth. 264. SAMUEL MARRYATT.

50.

Declaration in
debt on bond to
testator, by ex-
ecutors against
an heir at law.

In the Common Pleas. Trinity Term, 28. Geo. III.

LONDON, to wit. Elizabeth Hodgson, late of Greenbank, near Liverpool, in the county of Lancaster, sister and heir at law of Peter Holme, deceased, was summoned to answer John Sparling and Edward Mason, executors of the last will and testament of James Bond, deceased, in a plea that she render to the said John and Edward, as executors of the said James B. deceased, one thousand pounds of lawful, &c. which *she owes to* and unjustly detains from them, &c. and whereupon the said John and Edward, as executors as aforesaid, by Townley Ward, their attorney, complain, that whereas the said Peter, in his lifetime, to wit, on the thirteenth of January, A. D. 1777, at London, to wit, in the parish of St. Mary le bow, in the ward of Cheap, by his certain writing obligatory, commonly called a bond, sealed with the seal of him the said Peter in his lifetime, the date whereof is the same day and year above-mentioned, acknowledged himself to be held and firmly bound to the said James B. in his lifetime, in the said sum of one thousand pounds, to be paid to the said James B. deceased, when he the said P. H. should be thereto afterwards requested, for which payment to be well and truly made the said Peter, in his lifetime, bound himself and his heirs by the said writing-obligatory: Yet the said Peter, in his lifetime, nor the said E. H. after the death of the said P. H. did not pay the sum of one thousand pounds, or any part thereof, to the said James B. deceased, in his lifetime, nor hath the said E. H. paid the same to the said John and Edward, executors as aforesaid, since the decease of the said James B. although therunto severally often requested, but to pay the same to the said James B. deceased, in his lifetime, or to the said John and Edward, as executors of the said James B. deceased, since the death of the said P. or in any manner to satisfy them, or any of them, for the same, he the said P. in his lifetime, and the said E. H. since the decease of the said Peter, have hitherto wholly refused, and the said E. H. still doth refuse to pay the same to the said John and Edward, as executors as aforesaid, and the said E. unjustly detains from them, to the damage of the said John and Edward, executors as aforesaid, of twenty pounds, and therefore they bring suit, &c.; and the said John and Edward bring here into court the said writing-obligatory, which testifies the debt aforesaid, in form aforesaid, the date whereof is the same day and year aforesaid; and the said John and Edward also bring here into court the letters testamentary of the said James Bond, which fully proves to the court here that the said John and Edward are the executors of the last will and testament of the said James B. and have the administration thereof.

And the said E. by John Winders, her attorney, comes and defends the wrong and injury, when, &c. and says that she cannot deny the aforesaid action of the said John Sparling and Edward, nor that she is the heir at law of the said P. deceased, nor that the writing aforesaid is the deed of the said P.; but the said E. further
says,

says, that she ought not, by virtue of the said writing-obligatory, to be charged with the said debt as heir of the said P.; because she says that the said P. in his lifetime, was seised in his demesne as of fee of and in a certain messuage, called the Black Boar, situate at Middlewich, in the county of Cheller, now or late in the occupation of Richard Reeves, and four other messuages, situate in Lewin-street, in Middlewich aforesaid, with the gardens thereto, now or late in the several occupations of James C. Jame, Earl, Richard B. and Thomas C. and a certain close of land, containing one acre and eight perches, lying at Middlewich aforesaid, now or late in the occupation of Samuel Vernon, and a certain garden, containing about two roods and four perches, lying at M. aforesaid, now or late in the occupation of Joseph Maddock, and three cottages, situate at Pepper-street, in M. aforesaid, now or late in the several occupations of James Warren, Joseph and Mary D. and the reversion in fee simple of and in a certain other cottage, called Heald's House, otherwise Heald's Cottage, situate at Kinderton, in the said county, after the death of one Mary Heald, the tenant for life thereof (which said Mary Heald is still alive, to wit, at L. aforesaid, in the parish and ward aforesaid), also three seats or pews in the parish church of M. aforesaid, and a certain farm, consisting of three closes of land, called Cock-fields, containing about fourteen acres, three roods, and twenty-seven perches, lying at Sutton, in the said county, and a barn in M. aforesaid, now or late in the occupation of D. Wardry, and a certain other farm, consisting of three closes of land, called the Dyer's Fields, containing about six acres, two roods, and thirteen perches, lying at M. aforesaid, and Newton, in the said county, now or late in the occupation of Thomas Beckratt [here set out the remainder of the premises, which were very extensive]; and the said P. H. being so seised, afterwards, in the consideration of the sum of five thousand pounds to the said P. H. in his lifetime advanced and lent by one John Mawbrey, by a certain indenture of mortgage made on the twelfth of August 1771, at L. aforesaid, in the parish and ward aforesaid, between the said P. H. in his lifetime, of the one part, and the said John Mawbrey of the other part, which said indenture is now in the custody of the said John M. and the same, nor any counterpart thereof, is not nor ever has been in the hands, custody, or power of the said E. did demise, bargain, and sell the same unto the said John Norbury, to have and to hold the same several messuages, cottages, tenements, lands, tithes, hereditaments, and premises thereby demised, with their appurtenances, unto the said John Norbury, his executors, administrators, or assigns, from the day of the date of the said indenture for the term of one thousand years then next ensuing, subject nevertheless to a proviso in the said indenture contained for redemption of the said premises by the said plaintiff, his heirs, executors, and administrators, on his or their paying to the said John N. his executors, administrators, or assigns, the said sum of five thousand pounds, with lawful interest for the same, at a day in the said indenture appointed, and

in the lifetime of the said P. H. elapsed: And the said E. further says, that the said P. H. did thereby, for himself and his heirs, covenant with the said John N. to pay him the said five thousand pounds and interest, according to the said *proviso*: And the said E. further says, that the said five thousand pounds and interest were not paid by the said P. H. according to the said *proviso*, whereby the said term of years became absolute in law in the said John N. nor are the same yet paid; and the said premises, with the appurtenances, subject to the said term of years, and to the said mortgage, descended and came to the said E. by hereditary descent from the said P. H. by virtue whereof she became and was seised thereof in her demesne as of fee, subject to the said term and mortgage, and the said indenture and term of years thereby granted are still in full force: And the said E. further says, that the said P. H. in his lifetime, to wit, on the fourth of October 1775, at L. aforesaid, in the parish and ward aforesaid, did by his certain writing-obligatory, sealed with his seal, become bound to the said John N. in one thousand two hundred pounds, to be paid to the said John N. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said writing-obligatory; and that the said P. H. in his lifetime, to wit, on the seventh of November 1775, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing obligatory, sealed with his seal, become bound to one Charles Potts in six hundred pounds, to be paid to the said Charles Potts, when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory: And the said E. further says, that the said last-mentioned writing-obligatory was so made by the said P. H. in his lifetime, to the said Charles Potts as a trustee for the said John N. and was made and given by the said P. H. to the said Charles P. to and for the sole use and benefit of the said John N. to wit, at L. aforesaid, in the parish and ward aforesaid; and that the said P. H. in his lifetime, to wit, on the fourth of July 1776, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to the said John N. in other one thousand two hundred pounds, to be paid to the said John N. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the fifth of October 1777, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to the said John N. in eight hundred pounds, to be paid to the said John N. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory: And the said E. further says, that afterwards, and after the death of the said P. H. to wit, on the first of July 1780, there was justly due to the said John N. on the said several writings-

obligatory

obligatory the principal sum of one thousand nine hundred pounds, and the further sum of one hundred and seventy-one pounds before that time accrued due for interest thereon; and that on the same day and year last aforesaid there was justly due to the said John N. the sum of ninety-five pounds for interest on the said sum of five thousand pounds in the said indenture of mortgage mentioned, to wit, at L. aforesaid, in the parish and ward aforesaid; and that it was then and there agreed by and between the said E. and the said John N. that interest after the rate of five pounds by the hundred by the year should from the day and year last aforesaid be computed and paid to the said John N. for the said several sums of one thousand nine hundred pounds and five thousand pounds, and that the said sum of one thousand nine hundred pounds should be annexed to the said sum of five thousand pounds, and that the said sum of one hundred and seventy-one pounds and ninety-five pounds, amounting to the sum of two hundred and sixty-six pounds so due for interest thereon, should be paid by the said E. to the said John N. within six months from the date of the indenture hereinafter next mentioned; and that afterwards, in pursuance of the said agreement, and for carrying the same into execution, and for divers good causes and considerations therein mentioned, by a certain indenture made on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, between the said E. of the one part, and the said John N. (which said last-mentioned indenture is now in the custody of the said John N. and the same, or any counterpart, is not nor ever has been in the hands, custody, or power of the said E.) the said E. did covenant with the said J. N. that she the said E. would, within the space of six months from the date of the said last-mentioned indenture, pay unto the said John N. the said sum of two hundred and sixty-six pounds, and also that the said sum of one thousand nine hundred pounds, and all interest which should afterwards become due for the same to the said John N. on the said writing-obligatory, should from henceforth be annexed unto the said principal sums of five thousand pounds and the interest thereof; and that the said several capital and other messuages, tenements, cottages, lands, tithes, and hereditaments, late of him the said P. II. before-mentioned, should from thenceforth be charged and chargeable with the said principal sum of one thousand nine hundred pounds, and such interest for the same as aforesaid, as well as with the said principal sum of five thousand pounds, intended to be originally secured by the same indenture of mortgage, together with lawful interest for the same, and that the said premises should not be redeemed but upon payment as well of the said sum of five thousand pounds intended to be originally secured by the same indenture of mortgage, as also of the said principal sum of one thousand nine hundred pounds herein before-mentioned, together with lawful interest for those sums respectively from the day of the date of that indenture, and also upon payment of the said sum of two hundred and sixty-six pounds then remaining due for interest as aforesaid: And the said E. saith, that the said agreement and deed

last-mentioned were necessarily entered into by her for preventing suits which otherwise would have been commenced on the said mortgage and bonds, and were for the benefit of the estates of the said P. H. on that account: And the said E. further says, that she has not any messuages, lands, or tenements by hereditary descent from the said P. H. nor had she at the time of the commencement of this suit, or at any other time before or afterwards, other than the said messuages, tenements, cottages, lands, pews, tithes, and hereditaments, comprised in the said indenture of mortgage, subject to the said term or mortgage, save and except a certain messuage or dwelling-house, (here inserted premises not comprised in mortgage, which descended) &c. &c. &c. together with the appurtenances to the said last-mentioned premises respectively belonging: And the said E. further says, that the said messuages, tenements, cottages, lands, tithes, pews, and hereditaments, subject to the said indenture of mortgage as aforesaid, and all other the messuages, lands, tenements, pews, and hereditaments, with the appurtenances, which so descended to her the said L. Hodgson as heir of the said P. Holme, and also the said reversion, were, after the death of the said P. H. and before the commencement of this suit, to wit, on the twenty-seventh of October 1787, at L. aforesaid, in the parish and ward aforesaid, sold and disposed of for the purpose of satisfying the specialty debts of the said P. H. for the respective values thereof, and for the best prices that could be gotten for the same respectively, and even after deducting the necessary charges attending the sale thereof, amounted in the whole to fourteen thousand three hundred and one pounds fifteen shillings and no more, and that the rents, issues, and profits of the said several messuages, tenements, cottages, lands, pews, tithes, and hereditaments, from the time of the death of the said P. H. until the time when the same were so sold and disposed of as aforesaid, after deducting the necessary charges of receiving the same, amounted in the whole to four thousand seven hundred and one pounds twelve shillings and no more: And the said E. further says, that the said P. H. in his lifetime, by indentures of lease and release respectively made on the first and second days of March 1773, at L. aforesaid, in the parish and ward aforesaid, between him the said P. H. of the one part, and Robert Master, Charles White, and John Hankinson therein described of the other part, for and in consideration of the sum of eight hundred pounds therein mentioned, to be by them lent and paid to him the said P. H. and which was *bonâ-fide* lent and paid accordingly, did grant and release the several messuages, lands, and hereditaments therein particularly mentioned unto and to the use of the said Robert Master, C. W. and J. H. and their heirs, subject to a proviso in the said indenture of release contained for redemption of the said premises by the said P. H. his heirs, executors, administrators, or any of them, on his or their paying unto the said R. M. C. W. and J. Hankinson, their executors, administrators, and assigns, the sum of eight hundred pounds, with interest for the

same after the rate of five pounds for each one hundred pounds for a year, at a day in the said last-mentioned indenture appointed, and in the lifetime of the said P. H. elapsed: And the said E. further says, that the said P. H. did thereby for himself and his heirs covenant with the said R. M. C. W. and John Hankinson, to pay them the said eight hundred pounds and interest arising, according to the said last-mentioned proviso: And the said E. further says, that the said last-mentioned eight hundred pounds and interest were not paid by the said P. H. according to the said proviso, and that after the death of the said P. H. and before the commencement of this suit, to wit, on the twelfth of June 1784, at L. aforesaid, in the parish and ward aforesaid, the said E. did pay to the said R. M. and C. W. (the said J. Hankinson being deceased before that time) the sum of nine hundred and ninety-six pounds twelve shillings and ninepence, in full satisfaction and discharge of the said principal sum of eight hundred pounds thereby secured, and of the interest due thereon, and which sum was then due on the same indenture: And the said E. further says, that the said plaintiff in his lifetime, to wit, on the first of March 1765, at L. aforesaid, in the parish and ward aforesaid, did by his certain writing-obligatory, sealed with his seal, become bound to one E. Roberts (now Elizabeth Williamson, widow), and one Mary Roberts, since deceased, in the lifetime of the said Mary Roberts, and before the intermarriage of the said Elizabeth Williamson with her late husband John W. now also deceased, in four thousand pounds to be paid to the said Elizabeth R. and Mary Roberts, when he the said P. H. should be thereunto requested; to which payment the said plaintiff did bind himself and his heirs by the said last-mentioned writing obligatory: And the said E. further says, that the said P. H. in his lifetime, to wit, on the twenty-fourth of October 1768, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one George Johnston in four thousand pounds, to be paid to the said George Johnston when he the said P. H. should be thereunto afterwards requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the eighteenth of February 1765, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Edward Jones, one Michael Leyland, one Richard Saunders, and one Thomas Brannhill, in two hundred pounds, to be paid to the said E. J. Michael L. Richard S. and Thomas B. when he the said P. H. should be thereunto requested, to which payment he the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory, and that the said P. H. in his lifetime, to wit, on the tenth of July 1773, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Thomas Mallory, one John Scarbrick, one Daniel Smith, and one Richard Barn, in two hundred

pounds, to be paid to the said T. M. John S. Daniel S. and Richard Barn, when he the said P. H. should be thereunto requested; to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the eighteenth of August 1778, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one John Edmonson Heathcote (now Sir J. F. H. knight) in six hundred pounds, to be paid to the said J. F. H. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the twenty-second of February 1765, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Daniel Mather, one Peter Kenyon, one Nathaniel Pendleton, one William Laskell, and one William Jonathan Mercer, in one hundred and forty pounds to be paid to the said Daniel M. Peter K. Nathaniel P. William L. and Jonathan M. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, on the eighth day of June 1766, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Thomas Middleton in one thousand three hundred pounds, to be paid to the said T. M. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the eighteenth of February 1765, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Thomas Gathiffe in two hundred pounds, to be paid to the said T. G. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the twenty-ninth of August 1770, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Elizabeth Brickell in four hundred pounds, to be paid to the said E. B. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the first of October 1754, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Sir Oswald Moseley and one Sir Harry Every, bart. in eight hundred and seventy-four pounds, to be paid to the said Sir O. M. and Sir Harry E. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory;

tory; and that the said P. H. in his lifetime, to wit, on the thirtieth of November 1771, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Joshua Gore in two hundred pounds, to be paid to the said Joshua Gore when he the said P. H. should be thereto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the twenty eighth of November 1775, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Robert Neville, since deceased, in one hundred pounds, to be paid to the said Robert N. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory; and that the said P. H. in his lifetime, to wit, on the ninth of November 1774, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one Esther Manchester (now E. Holme, widow), before her intermarriage with her late husband, now deceased, in six hundred pounds, to be paid to the said E. M. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory, and that the said P. H. in his lifetime, on the fifteenth day of July A. D. 1773, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, become bound to one James Baudett in six hundred pounds, to be paid to the said James B. when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory, all which said several and respective writings-obligatory were so made by the said P. H. in his lifetime for true and just debts, and at the time of the death of the said P. H. were in full force and effect, not paid off, satisfied, cancelled, or made void: And the said E. Hodgson further says, that after the death of the said P. H. and before any notice of the said writing-obligatory in the said declaration mentioned, to wit, on the twenty-sixth of October 1787, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson laid out and expended three hundred and forty one pounds ten shillings in the necessary repairing of the said several messuages and hereditaments to descend to her as aforesaid; and that after the death of the said P. H. and before the commencement, to wit, on the first of July 1780, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay to the said John Norbury the said two hundred and sixty-nine pounds for interest to before that time due on the said several principal sums of five thousand pounds and one thousand nine hundred pounds, and that after the death of the said P. H. and before the commencement, to wit, on the first of July 1787, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay

to the said John Norbury the further sum of two thousand four hundred and fifteen pounds in satisfaction and discharge of the interest then and there due upon the said several principal sums of five thousand pounds and one thousand nine hundred pounds so secured as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the ninth of March 1782, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay one thousand two hundred and sixteen pounds three shillings and fourpence, in part satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said G. Roberts (now Elizabeth Williamson, widow), and Mary Roberts by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the seventh of November 1786, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay one thousand one hundred and eighty-eight pounds nine shillings and ninepence, in part satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said George Johnston, so made by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the tenth of April 1787, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay forty pounds in part satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said F. Jones, M. Leyland, James Saunders, and Thomas Brimhill by the said P. H. in his lifetime as aforesaid, and that after the death of the said P. H. and before the commencement of this suit, to wit, on the tenth of April 1784, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay one hundred and twenty-five pounds in full satisfaction and discharge of the money then and there due on the said writing-obligatory so made to him the said Thomas Mallony, John Scarbrick, Daniel Smith, and Richard Barn, by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the seventh of November 1786, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay two hundred and fourteen pounds fifteen shillings, in part satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said Sir John E. Heathcote by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the twenty-second of February 1782, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay seventy-seven pounds in full satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said Daniel Mather, P. Kenyon, N. Pendleton, William Laffell, and Jonathan Mercer, by the said P. H. in his lifetime as aforesaid; and that after the death of the said Peter Holmes, and before the commencement of this suit, to wit, on the

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the first day of January 1783, at London aforesaid, in the parish and ward aforesaid, she the said E. H. did pay two hundred and twenty-four pounds sixteen shillings and elevenpence in part satisfaction and discharge of the money then and there due on the said writing obligatory so made to the said Thomas Myddleton by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the eighteenth day of February 1782, at L. aforesaid, in the parish and ward aforesaid, she the said E. H. did pay one hundred and fifteen pounds in full satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said Thomas Gatcliffe by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the twenty-ninth of February 1782, at London aforesaid, in the parish and ward aforesaid, she the said E. H. did pay two hundred and thirty-five pounds in full satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said E. B. by the said P. H. in his lifetime as aforesaid, and that after the death of the said P. H. and before the commencement of this suit, to wit, on the third day of May 1780, at L. aforesaid, in the parish and ward aforesaid, she the said E. H. did pay nineteen pounds thirteen shillings and threepence, in part satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said Sir Otwald Mosely and Sir Harry Every by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the thirtieth day of May 1781, at London aforesaid, in the parish and ward aforesaid, she the said E. H. did pay sixty-seven pounds ten shillings in part satisfaction and discharge of the money then and there due on the said writing obligatory so made to the said Joshua Gore, and by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, 1772, at L. aforesaid, in the parish and ward aforesaid, the said E. Hodgson did pay one hundred and forty four pounds fifteen shillings and sevenpence, in part satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said Robert Neville in his lifetime, by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the seventeenth of November 1786, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay two pounds seventeen shillings and tenpence, in part satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said E. Holme before her intermarriage with her said late husband deceased, by the said P. H. in his lifetime as aforesaid; and that after the death of the said P. H. and before the commencement of this suit, to wit, on the fifteenth of July 1782, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson did pay one hundred

dred and seventeen pounds ten shillings in part satisfaction and discharge of the money then and there due on the said writing-obligatory so made to the said J^{ms} Parlett by the said P. H. in his lifetime as aforesaid: And the said E. Hodgson further says, that the said P. H. in his lifetime, and before the making of the said writing-obligatory in the said declaration aforesaid, to wit, on the thirteenth of July 1756, at L. aforesaid, in the parish and ward aforesaid, did by his certain other writing-obligatory, sealed with his seal, and now shewn to the court here (which said last-mentioned writing-obligatory was then and there made for a full and valuable consideration), become bound to her the said E. Hodgson in two thousand four hundred pounds to be paid to the said E. Hodgson when he the said P. H. should be thereunto requested, to which payment the said P. H. did bind himself and his heirs by the said last mentioned writing-obligatory, with a conditional agreement thereunto annexed for making void the said last mentioned writing-obligatory, on payment of the sum of one thousand two hundred pounds, with lawful interest for the same, on the thirtieth day of January then next ensuing, which said last-mentioned writing-obligatory at the time of the death of the said P. H. was in full force and effect, and not paid off, satisfied, cancelled, or made void: And the said E. further says, that one Joseph Wayles, after the death of the said P. H. in the court of our said lord the king, before the king himself, and by the writ of our said lord the king, impleaded the said E. Hodgson as heir and devisee of the said P. H. in a certain plea of debt for six hundred pounds of and upon a certain writing-obligatory made by the said P. H. in his lifetime, to wit, on the tenth of March 1777, and sealed with his seal, whereby the said P. H. became bound to the said Joseph Wayles in the said six hundred pounds, to be paid to the said Joseph Wayles when he the said P. H. should be thereunto afterwards requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory, and such proceedings were thereupon had in the said plea, that afterwards, to wit, in Trinity term, in the twenty-third year of the reign of our lord the now king, the said Joseph W. by the consideration and judgment of the said court of our lord the king, before the king himself, recovered against the said E. Hodgson his debt aforesaid, and also seven pounds fifteen shillings for the damages which he had sustained, as well by reason of the detention of the debt as for his costs and charges by him about his suit in that behalf expended, whereof the said E. Hodgson was convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears: And the said E. Hodgson further says, that one Elizabeth Milnes, after the death of the said Peter H. in the court of our lord the now king, before Alexander lord Loughborough and his companions, then his majesty's justices of the bench at Westminster, in the county of Middlesex, impleaded the said Elizabeth Hodgson as heir of the said P. H. in

a certain

a certain plea of debt for three thousand two hundred pounds of and upon a certain writing-obligatory made by the said P. H. in his lifetime, to wit, on the thirtieth of November 1773, and sealed with his seal, whereby the said P. H. became bound to the said Elizabeth Milnes in the said three thousand two hundred pounds, to be paid to the said E. M. when he the said P. H. should be thereto afterwards requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory, and such proceedings were thereupon had in the same plea, that afterwards, to wit, in Michaelmas term, in the twenty-seventh year of the reign of our said lord the now king, the said E. M. by the consideration and judgment of the said court of the bench, recovered against the said E. Hodgson her debt aforesaid, and also two hundred and twelve pounds ten shillings for the damages which she had sustained, as well by reason of the detention as for her costs and charges by her about her suit in that behalf expended, whereof the said E. H. was convicted, as by the record and proceedings thereof now remaining in the said court of the bench at Westminster aforesaid more fully appears: And the said Elizabeth Hodgson further says, that the said James Bartlett, after the death of the said P. H. in the court of our said lord the king, before the king himself, and by the writ of our said lord the king, impleaded the said E. H. as heir of the said P. H. in a certain plea of debt for six hundred pounds of and upon the said writing-obligatory so made by the said P. H. in his lifetime to the said James B. as aforesaid, and such proceedings were thereupon had in the same plea, that afterwards, in Michaelmas term, in the twenty-seventh year aforesaid, the said James B. by the consideration and judgment of the said court of our lord the king, before the king himself, recovered against the said E. H. his debt aforesaid, and also two hundred and twenty-five pounds ten shillings for the damages which he had sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said E. Hodgson was convicted, as by the record and proceedings thereof remaining in the said court of our said lord the king himself, at Westminster aforesaid, more fully appears: And the said E. Hodgson further says, that the said George Johnson, after the death of the said Peter H. to wit, in Michaelmas term, in the twenty-seventh year of the reign of our said lord the king, in the said court of our said lord the king, before the king himself, by bill without the writ of our said lord the king, impleaded the said E. Hodgson as heir of the said P. H. in a certain plea of debt for four thousand pounds, and thereupon the said writing-obligatory so made by the said P. H. in his lifetime to the said George Johnson as aforesaid, and such proceedings were thereupon had in the same court, that afterwards, to wit, in that same term, the said George Johnson, by the consideration and judgment of that court, recovered in the said plea against the said E. Hodgson his debt aforesaid, and also seventy-three pounds for the damages which he had sustained as well by reason of the detention

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tion of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said E. Hodgson was convicted, as by the record and proceedings thereof now remaining in the said court of our lord the king before the king himself, at Westminster aforesaid, more fully appears: And the said E. Hodgson further says, that the said Sir John E. Heathcote, since the death of the said Peter Holme, to wit, in Hilary term last past, in the court of our said lord the king, before the king himself, at Westminster aforesaid, by bill without the writ of our said lord the king, impleaded the said Elizabeth Hodgson as heir of the said P. H. in a plea of debt for six hundred pounds of and upon the said writing-obligatory so made by the said P. H. in his lifetime to the said Sir J. E. H. as aforesaid, and such proceedings were thereupon had in the same court, that afterwards, to wit, in that same term, the said Sir J. E. H. by the consideration and judgment of that court, recovered against the said Elizabeth Hodgson in the said plea his debt aforesaid, and also twenty pounds for the damages which he had sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, to be levied on the messuages, tenements, cottages, lands, pews, tithes, and hereditaments, with the appurtenances hereinbefore mentioned, so descended to the said E. Hodgson as aforesaid, and the said reversion when the same should happen, after payment, satisfaction, and allowance of certain incumbrances, debts, and sums of money in the record of that judgment mentioned; and whereof the said E. Hodgson was convicted, as by the record and proceedings thereof now remaining in the court of our lord the king, before the king himself, at Westminster aforesaid, more fully appears: And the said Elizabeth Hodgson says, that the said Esther Holme, after the death of the said P. H. to wit, in Hilary term now last past, in the court of our said lord the king, before the king himself, at Westminster aforesaid, by bill, without the writ of our said lord the king, impleaded the said E. Hodgson as heir of the said P. H. in a certain plea of debt for six hundred pounds of and upon the said writing-obligatory so made by the said P. H. in his lifetime to the said Esther Holme, before her intermarriage with her said late husband, and such proceedings were thereupon had in the same court, that afterwards, to wit, in that same Hilary term, the said Esther H. by the consideration and judgment recovered against the said E. Hodgson in the said plea, her debt aforesaid, and also twenty pounds for the damages which she had sustained, as well by reason of the detention of that debt, as for her costs and charges by her about her suit in that behalf expended, to be levied on the tenements, messuages, cottages, lands, pews, tithes, and hereditaments, with the appurtenances herein before mentioned, so descended to the said E. Hodgson as aforesaid, and the said reversion, when the same should happen, after payment, satisfaction, and allowance of certain incumbrances, debts, and sums of money in the record of that judgment whereof the said E. Hodgson was convicted, as by the record

and

PLEA—JUDGMENTS RECOVERED.

and proceedings thereof now remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears: And the said Elizabeth Hodgson says, that one R. Cooley, and one John Johnson, the executors of the last will and testament of the said R. Neville, after the death of the said P. H. and also after the death of the said R. Neville, to wit, in Hilary term now last past, in the court of our said lord the king, before the king himself, at Westminster aforesaid, by bill, without the writ of our said lord the king, impleaded the said R. Hodgson as heir of the said P. H. in a certain plea of debt for one thousand pounds, of and upon the said writing-obligatory so made by the said plaintiff in his lifetime to the said Robert Neville in his lifetime as aforesaid; and such proceedings were thereupon had in the same court, that afterwards, to wit, in that same Hilary term the said Robert C. and John J. as such executors as aforesaid, by the consideration and judgment of the said court against the said Elizabeth Hodgson in the said plea the debt aforesaid, and also twenty pounds for the damages which they had sustained by reason of the detention of the debt, as for their costs and charges by them about their suit in that behalf expended, to be levied on the messuages, tenements, cottages, lands, pews, tithes, and hereditaments, with the appurtenances herebefore mentioned, so descended to the said Elizabeth Hodgson as aforesaid, and the said reversion, when the same should happen, after payment, satisfaction, and allowance of certain incumbrances, debts, and sums of money in the record of that judgment mentioned, whereof the said Elizabeth Hodgson was convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before the king himself aforesaid, more fully appears: And the said E. Hodgson further says, that the said Elizabeth Williamson, after the death of the said P. H. also after the respective deaths of Mary Roberts and Joan Williamson, to wit, in Hilary term now last past, in the court of our said lord the king, before the king himself, at Westminster aforesaid, by bill, without the writ of our said lord the king, impleaded the said Elizabeth Hodgson as heir of the said P. H. in a certain plea of debt for four thousand pounds of and upon the said writing-obligatory so made by the said P. H. in his lifetime to the said E. Williamson and Mary Roberts, in the lifetime of the said Mary Roberts, and before the intermarriage of the said Elizabeth Williamson with the said John Williamson as aforesaid, and such proceedings were thereupon had in the same court, that afterwards, to wit, in Hilary term now last past, the said E. Williamson by the consideration and judgment of the said court, by the said court recovered against the said Elizabeth Hodgson in the said plea the debt aforesaid, and also twenty pounds for the damages which she had sustained, as well by reason of the detention of that debt as for her costs and charges by her about her suit in that behalf expended, to be levied on the messuages, tenements, cottages, lands, tithes, pews, and hereditaments, with the appurtenances.

purtenances hereinbefore mentioned, so descended to the said E. Hodgson as aforesaid, and the said reversion when the same should happen, after payment, satisfaction, and allowance of certain incumbrances, debts, and sums of money in the record of that judgment mentioned, whereof the said Elizabeth Hodgson was convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears: And the said E. Hodgson further says, that one James Worthington, after the death of the said P. H. in the court of our lord the now king, before Alexander lord Loughborough and his companions, then his majesty's justices of the bench, at Westminster aforesaid, impleaded the said Elizabeth Hodgson as heir of the said P. H. in a certain plea of debt for two thousand pounds of and upon a certain writing-obligatory made by the said P. H. in his lifetime, to wit, on the twenty-second day of May 1776, and sealed with his seal, whereby the said P. H. became bound to the said James Worthington in the said two thousand pounds, to be paid to the said James Worthington when he the said P. H. should be thereto afterwards requested, to which payment the said P. H. did bind himself and his heirs by the said last-mentioned writing-obligatory, and such proceedings were thereupon had in the same plea, that afterwards, to wit, in Easter term now last past, the said James Worthington, by the consideration and judgment of the said court of the bench, recovered against the said E. Hodgson his debt aforesaid, and also sixty-nine pounds for the damages which he had sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said E. Hodgson was convicted, as by the record and proceedings thereof now remaining in the said court of the bench, at Westminster aforesaid, more fully appears: And the said Elizabeth Hodgson further says, that one Charles White, after the death of the said P. H. to wit, in Hilary term now last past, in the court of our said lord the king, before the king himself, at Westminster aforesaid, by bill, without the writ of our said lord the king, impleaded the said Elizabeth Hodgson as heir of the said P. H. in a certain plea of debt for two thousand pounds of and upon a certain writing-obligatory made by him the said P. H. in his lifetime, to wit on the twenty-third day of November 1777, and sealed with his seal, whereby the said Peter H. became bound to the said C. W. in the said two thousand pounds, to be paid to the said C. W. when he the said P. H. should be thereto requested, to such payment the said Peter H. did bind himself by the said last-mentioned writing-obligatory, and such proceedings were thereupon had in the same plea, that afterwards, to wit, in that same term, the said C. W. by the consideration and judgment of the said court, recovered against the said Elizabeth Hodgson in the said plea the debt aforesaid, and also twenty pounds for the damages which he had sustained, as well by reason of the detention of that debt as for his costs and charges by him about his suit in

that

PLEA—JUDGMENTS RECOVERED.

that behalf expended, to be levied on the messuages, tenements, cottages, lands, pews, tithes, and hereditaments, with the appurtenances heretofore mentioned, so descended to the said E. Hodgson as aforesaid, and the said reversion, when the same should happen, after payment, satisfaction, and allowance of certain incumbrances, debts, and sums of money in the record of the judgment mentioned, whereof the said Elizabeth Hodgson was convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears: And the said Elizabeth Hodgson further says, that the several and respective judgments so had and obtained by the said James Wayley, Elizabeth Milnes, James Bartlett, George Johnstone, sir John F. H. Esther Holme, Robert Colley, and John Johnstone, Elizabeth Williamson, James Worthington, and C. W. against her the said Elizabeth Hodgson as aforesaid, were so had and obtained for true and just debts, really and *bona fide* due and owing from the said P. H. in his lifetime, and at the time of his death, and at the times of rendering the said several judgments respectively unpaid and unsatisfied, and that the said several judgments, except the said judgment so recovered by the said E. Milnes and James Bartlett, still remain in full force and effect, not reversed, discharged, or otherwise vacated; and that after the recovery of the said judgment so had and obtained by the said Elizabeth Milnes as aforesaid, to wit, on the ninth day of December 1786, at L. aforesaid, in the parish and ward aforesaid, she the said E. M. paid one thousand one hundred and seven pounds nineteen shillings and sixpence in satisfaction and discharge of the principal money and interest then and there due and owing on the said writing-obligatory on which the said judgment was so had and obtained by the said Elizabeth M. as aforesaid, being then and there due on the said writing-obligatory on which the said judgment was so had and obtained by the said Elizabeth M. as aforesaid, being the money then and there due and owing on the same judgment, exclusive of the damages so by her recovered as aforesaid, and that after the recovery of the said judgment so had and obtained by the said James Bartlett as aforesaid, to wit, on the second day of February 1787, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson paid two hundred and twenty-five pounds seventeen shillings and eight pence, in satisfaction and discharge of the principal money and interest then and there due and owing on the said writing-obligatory on which the said judgment was so had and obtained by the said James Bartlett, being then and there due and owing on the same judgment, exclusive of the damages so by him recovered as aforesaid, and that after the recovery of the said judgment so had and obtained by the said Esther H. as aforesaid, and that after the recovery of the said judgment so had and obtained by the said E. Holme as aforesaid, to wit, on the twenty-fifth day of December 1787, at L. aforesaid, in the parish and ward aforesaid, she the said E. Hodgson paid thirty-three pounds in part satisfaction

DEBT ON BOND.—REPLICATION.

tion and discharge of the monies then and there due and owing on the said last-mentioned judgment: And the said E. Hodgson further says, that there is still remaining due to the said John Norbury, in respect of the indenture of mortgage so made between the said P. H. in his lifetime, and the said John Norbury, and the said indenture so made between the said E. Hodgson and the said John Norbury, after the death of the said P. H. the said principal sums of five thousand pounds and one thousand nine hundred pounds to be paid to the said John Norbury out of the said messuages, tenements, cottages, lands, tithes, pews, hereditaments, and reversion so sold and disposed of as aforesaid, and that there still is due and owing to the said E. Hodgson upon and by virtue of the said writing-obligatory to her made by the said P. H. in his lifetime as aforesaid, and the condition thereunto annexed, the sum of one thousand eight hundred and one pounds three shillings: And the said E. Hodgson further says, that the said several sums of five thousand pounds and one thousand nine hundred pounds so remaining due to the said John Norbury as aforesaid, and the said sum of money so due to her the said E. Hodgson on the said writing-obligatory to her made by the said Peter Holme in his lifetime as aforesaid, and the said several sums of money so paid by the said E. H. as aforesaid, and the monies due and owing upon and by virtue of the said several judgments so recovered by the said Joseph Wayles, George Johnston, fir John E. H. Esther H. Robert Colley, and John Johnston, Elizabeth Williamfon, James Worthington, and Charles White respectively, exclusive of the damages so recovered by the said James Worthington as aforesaid, and of the monies paid in part satisfaction and discharge of the said writing-obligatory on which the said several judgments at the suits of the said George Johnston, fir John E. H. Esther H. Robert Colley, John Johnston, and Elizabeth Williamfon were respectively had and obtained before the recovery of the said several judgments, and also of the money paid in part satisfaction of the said judgment so recovered by the said Esther H. since the recovery thereof as aforesaid, exceed the full value of the said several messuages, tenements, cottages, lands, tithes, pews, hereditaments, and reversion so descended to her the said E. Hodgson as aforesaid, and also all the rents, issues, and profits received, or which without her default might have been received for the same, and also exceed the sums for which the same have been sold, and all such rents, issues, and profits as aforesaid; and this she the said E. H. is ready to verify; wherefore he prays judgment if she by virtue of the said writing-obligatory in the declaration mentioned, ought to be charged with the said debt as heir of the said P. Holme, &c.

G. HILL.

Replication.

And the said John Sparling and Edward as executors as aforesaid, as to the plea of the said Elizabeth Hodgson by her above pleaded in bar, say, that they, by reason of any thing by the said Elizabeth in that plea alledged, ought not to be barred from having and maintaining

DEBT.—AGAINST HEIRS, &c.—REPLICATION.

maintaining their aforesaid action thereof against her; because protesting that the said plea and the matters therein contained are not sufficient in law to bar them the said John Sparling and Edward from having and maintaining their aforesaid action against the said Elizabeth Hodgson; protesting also that there is not remaining due to the said John Norbury, in respect of the said indenture of mortgage so made between the said P. H. in his lifetime, and the said John Norbury, and the said indenture so made between the said Elizabeth Hodgson, and the said John Norbury after the death of the said P. H. the said principal sums of five thousand pounds, and one thousand nine hundred pounds, as the said Elizabeth Hodgson hath above in pleading alledged; protesting also that there is not due and owing to the said E. Hodgson, upon and by virtue of the said writing obligatory so to her made by the said P. H. in his lifetime as aforesaid, and the condition thereunto annexed, the sum of one thousand eight hundred and one pounds and three shillings, as the said Elizabeth Hodgson hath above in pleading alledged; protesting also that the said E. Hodgson hath not paid the said several sums of money in the said plea mentioned, save and except the said sum of nine hundred and ninety-six pounds twelve shillings and ninepence, and hereinafter particularly mentioned, in manner and form as the said Elizabeth Hodgson hath above in pleading alledged; for replication in this behalf they the said John Sparling and Edward say, that the estate and interest of the said P. H. in the said several lands, messuages, and her ditaments, in the said plea of the said Elizabeth Hodgson alledged to have been granted and released by the said P. H. in his lifetime, by the said indentures of lease and release respectively made on the first and second days of March 1773, unto and to the use of the said Robert Master, Charles White, and John Hankinson, and their heirs, upon the death of the said P. H. to wit, on the first of July, A.D. 1780, came to the said Elizabeth H. as heir at law of the said P. H. by descent, to wit, at L. aforesaid, in the parish and ward aforesaid: And the said John Sparling and Edward further say, that the said Elizabeth Hodgson afterwards, to wit, on the first of May, A.D. 1784, contracted and agreed with Edward Tomkinson, of Bostock, in the county of Chester, for the absolute sale and disposal of the said messuages, land, and hereinafter in the said last-mentioned indenture of lease and release or mortgage comprised, at or for the price or sum of one thousand three hundred pounds, to wit, at L. aforesaid, in the parish and ward aforesaid: And the said John Sparling and Edward further say, that after the making of the said indenture of lease or mortgage, and before the making of the said indenture of release hereinafter mentioned, to wit, on the first of April, A.D. 1781, the said John Hankinson soon died, leaving the said Robert Master and Charles White him surviving, to wit, at L. aforesaid, in the parish and ward aforesaid: And the said John Sparling and Edward further say, that afterwards, to wit, on the twelfth of June, A.D. 1789, at L. aforesaid, in the parish and ward aforesaid, by a cer-

DEBT, &c.—AGAINST HEIRS, &c.—REPLICATION.

in other indenture *quarto partite*, then and there made between the said E. Hodgson, as sister and heir at law of the said P. H. deceased, of the first part, the said Robert Master and Charles White, as surviving trustees named and appointed in and by an indenture of settlement made upon and previously to the marriage of James Bradshaw, of D. in the county of Lancaster, esquire, with Ann his wife, late Ann Whaley, spinster, one of the daughters and co-heiresses of John Whaley, late of Blackburn, in the said county, deceased, of the second part, the said James Bradshaw on the third part, and the said E. Tomkinson of the fourth part, and bearing date the same day and year last aforesaid, and sealed with the respective seals of the said Elizabeth Hodgson, Robert Master, Charles White, and James Bradshaw, reciting the said indentures of lease and release or mortgage, bearing date the first and second days of March, A. D. 1773, and that the said John Hankinson was since dead, leaving the said Robert Master and Charles White his survivors; and that A. the then late wife of the said James Bradshaw, was also dead, but before her death she duly made and published her last will and testament in writing, by virtue whereof the said James Bradshaw was become entitled to the principal and interest due on the said recited mortgage; and that the said Elizabeth Hodgson had contracted and agreed with the said Edward Tomkinson for the absolute sale and disposal to him of the said messuages and dwelling-houses, parcels of land and premises thereinafter particularly mentioned and described, and intended thereby to be granted and released, at the price or sum of one thousand three hundred pounds; it was recited that for and in consideration of nine hundred and ninety-six pounds twelve shillings and ninepence of lawful, &c. to the said James Bradshaw in hand well and truly paid by the said E. Tomkinson, at or before the sealing and delivery of the said indenture *quarto partite*, in full discharge of all principal money and interest due and owing on the said recited mortgage (the receipt whereof the said James Bradshaw did thereby acknowledge, and thereof and of every part thereof did acquit and release, as well the said Elizabeth Hodgson as the said E. Tomkinson, their and each of their heirs, executors, and administrators and every of them for ever, by the said indenture *quarto partite*), and also for and in consideration of the sum of three hundred and three pounds seven shillings and threepence of like lawful money, &c. residue of the said sum of one thousand three hundred pounds to the said Elizabeth Hodgson in hand well and truly paid by the said E. Tomkinson, at or before the sealing and delivery of the said indenture *quarto partite* (the receipt whereof the said Elizabeth Hodgson did thereby acknowledge, and thereof and of every part thereof did acquit and release the said Edward Tomkinson, his heirs, executors, and administrators); and also for and in consideration of five shillings a piece of like, &c. to the said Robert Master and Charles White in hand paid by the said Edward Tomkinson at or before the sealing and delivery of the said indenture *quarto partite* (the receipt whereof was thereby acknowledged)

DEBT, &c.—AGAINST HEIRS, &c.—REJOINDER.

knowledge), and for divers other good causes and considerations thereunto moving, they the said Robert Master and Charles White, at the request and by the discretion and appointment of the said James Bradshaw testified by their being made parties and their sealing and delivering the said indenture *quarto partite*, by the said indenture *quarto partite*, did, and each of them did bargain and sell, alien, release, and convey; and the said Elizabeth Hodgson by the said indenture *quarto partite* did grant, bargain, sell, alien, remise, release, ratify, and confirm unto the said E. Tomkinson (in his actual possession then being, by virtue of a bargain and sale to him thereof made by the said Robert Master, Charles White, and Elizabeth Hodgson, for one whole year, in consideration of five shillings, by indenture, bearing date the day next before the day of the date of the said indenture *quarto partite*, and by force of the statute made for transferring uses into possession), and to his heirs and assigns, all the said premises so as aforesaid by the said indenture *quarto partite*, on the first and second of March 1773 as aforesaid, granted and released by the said P. H. in his lifetime, to the use of the said Robert Master, Charles White, and John Hankinson, and their heirs as aforesaid, to have and to hold the same unto the said E. Tomkinson, his heirs and assigns, to the only proper use and behoof of the said E. Tomkinson, his heirs and assigns for ever: And the said John Sparling and Edward further say, that the said sum of nine hundred and ninety-six pounds twelve shillings, and ninepence, the said sum *quarto partite* mentioned, and which was paid upon the execution thereof by the said E. Tomkinson to the said James Bradshaw, in part of the purchase money for the said mortgaged premises, was and is the identical payment of nine hundred and ninety-six pounds twelve shillings and ninepence supposed by the said plea of the said Elizabeth to have been made to the said Robert Master and Charles White, in satisfaction and discharge of the principal and interest of the said mortgage, and not other or different, to wit, at L. aforesaid, in the parish and ward aforesaid, without this that the said Elizabeth Hodgson did pay to the said Robert Master and Charles White, or either of them, the said sum of nine hundred and ninety-six pounds twelve shillings and ninepence, in manner and form as by the said plea is supposed; and that the said John Sparling and Edward, as executors as aforesaid, are ready to verify; wherefore they pray judgment and their said debt, together with their damages by reason of the detention thereof, to be adjudged to them, &c.

S. LE BLANC.

And the said Elizabeth Hodgson says, that she, by reason of any Rejoinder thing in the said replication of the said John Sparling and Edward Mason alledged, ought not to be charged with the debt aforesaid by virtue of the said writing-obligatory in the declaration mentioned; because she says she the said Elizabeth Hodgson did pay to the said Robert Master and Charles White the said sum of nine hundred

DEBT ON BOND—PLEA—PAYMENT.

and ninety-six pounds twelve shillings and ninepence, in manner and form as by the said plea is above alledged; and of this she puts herself upon the country, &c.

G. HILL.

And the said John Sparling and Edward Mason, executors as aforesaid, do the like; therefore the sheriffs are commanded that they cause to come here in _____, twelve, &c. by whom, &c. who neither, &c. to recognize, &c. because as well, &c.

John Sparling

Hilary Term, 28. Geo. III.

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bond, executed
in America;
plaintiff and de-
fendant Ameri-
can loyalists;
defendant sued
here separately.

MIDDLESEX, to wit. David Ogden, late of Newark, in the county of Essex, in the province of East New Jersey, esquire, was summoned to answer George Folliot of a plea that he render to him two thousand two hundred and fifty pounds, which he owes to and unjustly detains from him, &c.; and thereupon the said G. by Thomas Meggison his attorney complains, that whereas the said D. on the tenth of October 1769, at New York, to wit, at Westminster, in the said county of Middlesex aforesaid, by his certain writing-obligatory, sealed with his seal, acknowledged himself to be held and firmly bound to the said George in the sum of four thousand pounds current money of the province of New York, which said four thousand pounds current money of the province of New York, at the time of making the said writing-obligatory, did amount to two thousand two hundred and fifty pounds of lawful money to be paid to the said G. when he the said D. should be thereunto required; nevertheless the said D. although often requested, hath not paid the said sum of four thousand pounds current money of the province of New York, nor the said two thousand two hundred and fifty pounds of lawful money of any part thereof, to the said G. but to pay the same to the said G. he the said D. hath hitherto wholly refused, and still doth refuse, to the damage of the said G. of four thousand pounds, and therefore he brings suit, &c.; and the said George brings here into court the aforesaid writing-obligatory, which testifies the debt aforesaid in form aforesaid, the date whereof is the same day and year aforesaid, &c.

The above, with Geo. F. attorney on
with the defendant, as set out in 4. Nov. 1769

Plea that one
L. M. and one
M. joined
with defendant,
and after paid
the money.

And the said D. by Thomas Pearson his attorney, comes and defends the wrong and injury; when, &c. and craves oyer of the said writing-obligatory, and it is read to him in these words following, *i. e.* KNOW all men by these presents that one Lewis Morris, of the county of West Chester, in the province of New York, gentleman, Richard Morris, of the city of New York, attorney at law, David Ogden, of N. in the county of E. in the province of N. E. Jersey, esquire, are held and firmly bound unto G. F. of the city of New York aforesaid, in the sum of four thousand pounds current money of the province of New York, to be paid to the said G. F. his certain attorney, executor, administrator, or assigns, to which payment, well and truly to be made,

PLEA—PAYMENT BY CO-OBLIGOR.

we do bind ourselves, and each of us, our and each of our heirs, executors, administrators, and every of them jointly and severally firmly by these presents, sealed with our seals, dated in New York aforesaid the tenth of October 1769. He also prays oyer of the condition of the said writing-obligatory, and it is read to him in these words following, *i. e.* the condition of the above obligation is such, that if the above-bounden Lewis Morris, R. M. and D. O. or either of them, their or either of their heirs, executors, or administrators, or any of them, shall and do well and truly pay, or cause to be paid to the said G. F. his executors, administrators, or assigns, the just and full sum of two thousand pounds current money as aforesaid on or before the tenth of October next ensuing, with lawful interest thereof, then the above obligation to be void, otherwise to remain in full force and virtue, which being read and heard, the said D. says, that the said G. ought not to have or maintain his said action thereof against him the said D. because he says, that the said L. M. and R. M. named in the said writing-obligatory and condition on the said tenth of October, A. D. 1769, at New York aforesaid, to wit, at Westminster aforesaid, in the county of Middlesex, sealed, and as their act and deed delivered the said writing-obligatory to the said George along with the said D. and that the said L. M. and R. M. after the said tenth of October mentioned in the said condition, and before the suing out the original writ of the said G. to wit, on the first of January 1785, at Westminster aforesaid, in the said county of Middlesex, paid to the said G. the said principal sum of two thousand pounds current money of the province of New York in the said condition mentioned, with all interest then due for the same, according to the form of the statute in such case made and provided; and this the said D. is ready to verify; wherefore he prays judgment if the said George ought to have or maintain his said action thereof against him the said D. &c. : And for a further plea in this behalf by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, the said D. says, that the said G. ought not to have or maintain his said action thereof against him the said D. because he says, that he the said D. after the making the said writing-obligatory, and after the said tenth of October mentioned in the said condition of the said writing-obligatory, and before the suing out the original writ of the said G. to wit, on the first of January 1785, at Westminster aforesaid, in the said county of Middlesex, paid to the said G. the said principal sum of *two thousand pounds* current money of the said province of New York in the said condition mentioned, with all interest then due for the same, according to the form of the statute in such case made and provided; and this the said D. is ready to verify; wherefore he prays judgment if the said G. ought to have or maintain his said action against him, &c. : And for further plea in this behalf by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided,

2d Plea, the
defendant prays

provided, the said D. says, that the said G. ought not to have or maintain his said action thereof against him; because he says, that at and before the time of making the said writing-obligatory the said George L. Richard, and D. were severally and respectively persons residing within the United States of America in parts beyond the seas, and continued to resident there until and upon, and after the twenty-second of October 1779, to wit, at Westminster aforesaid: And the said D. further says, that after the making the said writing-obligatory, and after the said tenth of October 1779, the said sum of money mentioned in the said condition then remaining and being due and payable, and wholly unpaid to the said George, and the said writing-obligatory, and all the money due thereon being then the property of and belonging to the said George in foreign parts, to wit, at New York at resid in America, and the said G. then residing within the aforesaid state of New York, then being one of the United States of America, by a certain law of the said state of New York then and there, to wit, on the said twenty-second of October, in the said year of Our Lord 1779, at the state of New York aforesaid in America, to wit, at Westminster aforesaid made, & entitled "An Act for the Forfeiture and Sale of the Estates of Persons who have adhered to the Enemies of the State, and for the declaring the Sovereignty of the People of this State in respect to all Property within the same," the said G. by the name of G. F. was declared to be *ipso facto* attainted of the offence of adhering to the enemies of the said state of New York, and all and singular the estate both real and personal held or claimed by him the said G. on the said twenty-second of October, in the said year of Our Lord 1779, being the day of passing that law, was and was thereby declared to be forfeited to and vested in the people of the said state of New York, which said law of the said state of New York from thence hitherto hath been, and still is in full force and effect; and the said writing-obligatory, and all the money due thereon on the said twenty-second of October, in the said year of Our Lord 1779, thereby became and was, and from thence hitherto hath remained and continued, and still is forfeited and vested in the people of the said state of New York, to wit, at Westminster aforesaid, in the said county of M.; and thus the said D. is ready to verify; wherefore he prays judgment if the said George ought to have or maintain his said action thereof against him, &c. : And for a further plea in this behalf by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case, &c. the said D. says, that the said G. ought not to have or maintain his said action against him the said D. because he says, that at the time of making the said writing-obligatory, and long before, the said G. and also the said Lewis M. and D. were severally and respectively resident within the United States of America, in parts beyond the seas, and that the said writing-obligatory was there executed by them the said L. M. and D. and delivered to him the said G. at New York aforesaid, in the said United States of America, in parts beyond

4th Plea, that defendant executed bond aforesaid for debt of another, and left property, subject to his debts, more than sufficient, and that his estates were sufficient and liable to and upon and

PLEA IN DISCHARGE.

beyond the seas, and that the said sum of two thousand pounds current money of New York in the said consideration mentioned, for the securing whereof the said writing was given and executed, was for a debt due from the said L. and R. to the said G. and for the payment thereof to the said G. the said D. joined in the said writing-obligatory as a security for the said L. and Richard, to wit, at Westminster aforesaid. And the said D. further says, that at the time of making the said writing-obligatory, and from thence continually until the attainder of him the said D. and forfeiture of his estate hereinafter mentioned, he the said D. was resident in the state of New Jersey, being one of the United States of America, and was during all that time in possession of real and personal property within the said state of New Jersey of much greater value than was sufficient to have paid or satisfied the said sum of four thousand pounds current money of New York in the said writing-obligatory mentioned, and all other debts due and owing by the said D. to any person or persons whatsoever, to wit, at Westminster aforesaid. And the said D. further says, that he being resident and possessor of property within the said state of New Jersey as aforesaid afterwards, to wit, on the second Tuesday in January 1779, within the state of New Jersey, in America, was, according to the laws and statutes of the said state of New Jersey, attainted of adhering to the enemies of the said state, and thereby all his real and personal estate, within the said state of New Jersey became and was forfeited, and vested in the said state of New Jersey for ever, to wit, at Westminster aforesaid; and it was provided by the said laws and statutes of the said state of New Jersey, that the said real and personal estate of the said D. so forfeited and vested in the said state of New Jersey as aforesaid, should be, and they accordingly were by the said laws and statutes of the said state made liable in the first place to the payment of all debts and demands against the said D. such demands being made according to the terms prescribed by the several laws and statutes of the said state of New Jersey: And the said D. further says, that in consequence of the said attainder of him the said D. as aforesaid, all the real and personal estate of him the said D. within the said state of New Jersey, was afterwards, to wit, on the eighteenth of January 1779, in New Jersey aforesaid, seized by the said state of New Jersey for the benefit of the said state, to wit, at Westminster aforesaid; and that the real and personal estates of him the said D. within the said state of New Jersey, at the time of his attainder, and also at the time of the said seizure thereof by the said state of New Jersey, were of greater value than was sufficient to pay the said sum of four thousand pounds current money of New Jersey mentioned in the said writing-obligatory, and all other debts and demands due and owing by, and which any person or persons had against the said D. on his said estates, to wit, at Westminster aforesaid, whereof the said G. W. then and there had notice: And the said D. further says, that after the said attainder of him the said D. as aforesaid, and the said forfeiture

5th Plea, that defendant was attainted by several acts of adhering to the enemies of the state, and estates confiscated subject to his debts and estates more than sufficient.

and seizure of his said real and personal estates, the said G. was at liberty, and was, according to the laws and statutes of the said state of New Jersey, to have made demand of and from the said state of New Jersey of the said sum of money due to him by virtue of the said writing-obligatory, against the said real and personal estates of the said D. so forfeited in the said state of New Jersey as aforesaid, and might thereout have been satisfied and paid his said debt, to wit, at Westminster aforesaid; and this the said D. is ready to verify; wherefore he prays judgment if the said George ought to have or maintain his said action thereof against the said D. &c.: And for further plea in this behalf by leave of the court here for this purpose first had and obtained, according to the form of the statute, &c. the said D. says, that the said George ought not to have or maintain his said action against him the said D. because he says, that at the time of making the writing-obligatory, and long before, the said George, and also the said L. R. and D. were severally and respectively resident within the United States of America, in parts beyond the seas, and that the said writing-obligatory was there executed by them the said L. R. and D. and delivered to him the said G. in parts beyond the seas, at New York, in the United States of America; and that the said sum of two thousand pounds current money of New York in the said condition mentioned, for the securing whereof the said writing-obligatory was given and executed, was for a debt due from the said L. and R. to the said G. and for the payment whereof to the said George the said D. joined in the said writing-obligatory only as a security for the said L. and R.: And the said D. further says, that at the time of making the said writing-obligatory, and from thence continuing until the attainder of him the said D.'s forfeiture of his estate hereafter mentioned, he the said D. was resident in the state of New York, being one of the United States of America, and was, during all that time, in possession of real and personal property within the said state of New Jersey, being one of the United States of America, and was, during all that time, in possession of real and personal property within the said state of New Jersey, more than sufficient to have paid and satisfied the said sum of four thousand pounds current money of New York in the said writing-obligatory mentioned, and all other debts due and owing by the said D. to any person or persons whomsoever, to wit, at Westminster aforesaid: And the said D. further says, that he being resident and possessed of property within the said state of New Jersey aforesaid was, according to the several laws and statutes of the said state of New Jersey, and by an inquisition and judgment rendered hereafter mentioned, on the several days therein mentioned, attainted of adhering to the enemies of the said state of New Jersey, and thereby all his real and personal estates within the said state of New Jersey became and were forfeited and vested in the said state of New Jersey for ever, to wit, an act passed the fourth of October 1779, entitled, "An Act to punish Traitors and Disaffected Persons;" one other act passed the

fifth

PLEA IN DISCHARGE.

fifth of June 1777, entitled, "An Act of Free and General Pardon, and for other Purposes therein mentioned;" one other act passed the fifteenth of April 1778, entitled, "An Act for taking Charge of and holding the Real Estates, and for forfeiting the Personal Estates of certain Fugitives and Offenders, and for enlarging and continuing the Powers and Commissions appointed to seize and dispose of such Personal Estates, and for ascertaining and discharging the Lawful Debts and Claims thereon;" one other act passed on the eleventh of December 1778, entitled, "An Act for forfeiting and vesting in the said State of New Jersey the Real Estates of certain Fugitives and Offenders, and for directing the Mode of determining and satisfying the Lawful Debts and Demands which may be due from, or made against such Fugitives or Offenders, and for other Purposes therein mentioned;" and also by force of a certain inquisition, dated the eighth day of June 1778, taken and made in the County of Essex, in the said State of N. J. by two Justices of the Peace summoned for that purpose, thereby finding that the said D. O. had since the fourth day of October 1776, and before the fifth of June 1777, to wit, on or about the twenty-fourth day of December 1776, gone into the enemies lines and aided and abetted the King of Great Britain's troops against the form of his Allegiance to the State of N. J. and against the peace of the said State, the government and dignity of the same, and on which judgment was entered against the said D. O. in the inferior court of common pleas for the County of E. in the said State of N. J. also said, according to the directions and mode prescribed by the aforesaid act, passed on the eighteenth day of April 1778: And the said David further says, that it was provided by the said laws and statutes, and also by one other act passed by the Legislature of the said State of N. J. on the twenty-third day of December 1773, entitled, "An Act for ascertaining the Value of Debts due from the forfeited Estate of certain Fugitives and Offenders, and for directing the Payment of the same;" that the said real and personal estate of the said D. so forfeited and vested in the said State of N. J. as aforesaid, should be, and they accordingly were by the said laws and statutes of the said State made liable in the first place to the payment of all debts and demands against the said D. such demands being made according to the terms prescribed by the said several laws and statutes of the said State of N. J.: And the said D. further says, that in consequence of the said attainder of him the said D. and forfeiture of his estates as aforesaid, all the real and personal estates of him the said D. within the said State of N. J. were afterwards, to wit, between the tenth day of September 1777, and the third day of August 1779, seized and sold by the said State of N. J. and the monies arising on such sales, and also on and for several debts due to the said D. by persons residing within the said State of N. J. were received by the said State for the said uses and purposes mentioned in the said laws and statutes of the said State of N. J. aforesaid; and the real and personal estates of him the said D. within the said State of N. J. at the time of his attainder

tainder as aforesaid; and also at the time of the said seizure thereof by the said state of N. J. were of great value, and then was sufficient to pay the said sum of four thousand pounds current money of N. J. mentioned in the said writing-obligatory, to wit, at Westminster aforesaid, whereof the said G. then and there had notice: And the said D. further says, that after the said attainder of him the said D. as aforesaid, and the said forfeiture, seizure, and sale of his said real and personal estates the said G. was at liberty, and might, and ought, according to the laws and statutes of the said state of N. J. to have made demand of and from the said state of N. J. of the said sum of money due to him by virtue of the said writing-obligatory against the said real and personal estates of the said D. so forfeited and vested in the said state of N. J. as aforesaid, and might have been paid his said debt, to wit, at Westminster aforesaid; and this he the said D. is ready to verify; wherefore he prays judgment if the said G. ought to have or maintain his said action thereof against him the said D. &c.

S. LE BLANC.

Replication to
the first plea,
and issue.

And the said G. as to the said plea of the said D. by him first above pleaded in bar, says, that he the said G. by reason of any thing in that plea above alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said D. because he says, that the said L. and R. did not pay to the said G. the said principal sum of two thousand pounds of the said province of N. J. in the said condition mentioned, with all the interest due for the same in manner and form as the said D. hath above in his said plea alleged; and this the said G. prays may be enquired of by the country, &c.: And the said George, as to the said plea of the said

To the 2d plea,
and issue.

D. by him secondly above pleaded in bar, says, that he by reason of any thing in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said D. because he says, that the said D. did not pay to the said G. the said penal sum of two thousand pounds current money of the said province of N. J. in the said condition mentioned, with all interest due for the same in manner and form as the said D. hath above in his last-mentioned plea alleged; and this the said

To the 3d plea,
that the state of
N. J. was not
then one of
the United
States, but one
of his Majesty's
provinces in
open rebellion.

G. also prays may be enquired of by the country, &c.: And the said George, as to the said plea of the said D. by him thirdly above pleaded in bar, saith, that he by reason of any thing in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against him; because protesting that before and at the time of making the said writing-obligatory the said G. L. R. and D. were not severally and respectively residing within the United States of America, and that they did not continue to reside there until and upon and after the said twenty-second day of October 1779, as in the said plea is alleged; for replication in this behalf the said George says, that at the time of the making the said supposed law of the state of N. J. in the said plea mentioned, the said state was not one of the United States of A.

but

DEMURRER TO REPLICATION—REJOINDER.

but was one of his majesty's colonies in America then in open rebellion against his said majesty, to wit, at Westminster aforesaid; and this he is ready to verify; wherefore he prays judgment and his said debt, together with his damages by reason of the detaining, to be adjudged to him, &c.

And the said George, as to the said plea of the said D. by him fourthly above pleaded in bar, saith, that the said plea in manner and form as the same is above pleaded and the matters therein contained are not sufficient in law to bar the said George from having and maintaining his aforesaid action thereof against the said D. to which said plea in manner and form above pleaded, the said G. is not under any necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf, the said G. prays judgment and his said debt, together with his damages by reason of the detaining the same, to be adjudged, &c.: And the said George, as to the said plea of the said D. by him fifthly above pleaded in bar, saith, that the said plea in manner and form as the same is above pleaded and the matters therein contained are not sufficient in law to bar the said G. from having and maintaining his aforesaid action against the said D.; to which said plea, in manner and form above pleaded, the said G. is not under any necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf, the said G. prays judgment and his said debt, together with his damages by reason of the detaining the same, to be adjudged to him, &c.

S. LAWRENCE.

And the said D. as to the said plea of the said G. by him above pleaded by way of reply to the said plea of the said D. by him first above pleaded in bar, and whereof the said G. puts himself upon the country, doth so likewise; and as to the said plea of the said G. by him above pleaded by way of reply to the said plea of the said D. by him secondly above pleaded in bar, and whereof the said G. puts himself, the said David doth so likewise; and as to the said plea of the said G. by him above pleaded by way of reply to the said plea of the said D. by him thirdly above pleaded in bar, the said D. says, that the said G. by reason of any thing by him therein alledged ought not to have or maintain his aforesaid action thereof against him the said D.; because he says, that before the making of the said law of the state of N. J. in the said plea of the said D. above-mentioned, to wit, on the fourth day of July, A. D. 1776, the several colonies of New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New-York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in A. separated themselves from the government and crown of Great Britain, and united themselves together, and were by the people

DEBT.—ON BOND.—REJOINDER.

of the said respective colonies in congress declared and made free and independent states, by the name and stile of the United States of A. and to have full power to do all acts and things which independent states may of right do, to wit, at Westminster, in the county of M.: And the said D. further says, that afterwards, to wit, on the third day of September 1783, by the definitive treaty of peace and friendship made and signed at Paris, on the same day and year last aforesaid, between our lord the now king, and the said United States of A. our said lord the king acknowledged the said United States to be free, sovereign, and independent states, and that he treated with them as such; and by the said treaty, the several laws which had been made and passed by the legislatures of the said respective states after the declaration of independency to made by them as aforesaid, for the confiscation of the property of persons within the said respective states, were recognized and admitted to be valid: And the said D. further says, that before the making of the said law of the state of N. J. in the said third plea of the said D. above-mentioned, to wit, on the said fourth day of July 1776, and from thenceforth continually hitherto the said United States became and were divided from his said majesty's dominions and government, and were absolutely independent thereof; and that long before, and at the said times of making the said law of the state of N. J. in the said third plea of the said D. mentioned, and from thence hitherto the people of the said state hath exercised, and still doth exercise sovereignty, legislation, and government within the said state of N. J. separate and distinct from the legislation and government of Great Britain; and that the said law of the state of N. J. in the said third plea of the said D. mentioned, from the said time of the making thereof, hitherto hath been and still is in full force and effect, not in any way repealed, annulled, or made void, to wit, at Westminster aforesaid; and this the said D. is ready to verify; wherefore he prays judgment if the said George ought to have or maintain his said action against him; and the said D. says, that the said plea by him fourthly above pleaded in bar and the matters therein contained are sufficient in law to bar the said G. from having and maintaining his aforesaid action against the said D. which said plea, and matters therein contained, the said D. is ready to verify and prove as the court shall award; wherefore, &c.: And the said D. that the said plea by him fifthly above pleaded in bar, and the matters therein contained are sufficient in law to bar the said G. from having and maintaining his said action against the said D. which said plea and the matters therein contained the said D. is ready to verify as the court shall award, wherefore inasmuch as the said G. hath not answered the said plea, nor in any manner denied the same, the said D. prays judgment, and if the said G. may be barred from having and maintaining his said action against him, &c.

S. LE BLANC.

And

Joinders in de-
murrer to the
4th and 5th
pleas.

SURREJOINDER—REBUTTER.

And the said George, as to the said plea of the said David by him above pleaded by way of rejoinder to the plea of the said G. above pleaded, by way of reply to the plea of the said David thirdly above pleaded in bar, says, that by reason of any therein contained he ought not to be barred from having and maintaining his aforesaid action thereof against him, because he says, that by the said treaty the said several laws supposed to have been made and passed by the legislature of the said respective states, after the declaration of independency so made by them as aforesaid, for the confiscation of the property of persons within the said respective states were not recognized and admitted to be valid; and thus he is ready to verify; wherefore he prays judgment and his debt aforesaid, together with his damages occasioned by reason of that debt, to be adjudged to him, &c.

S. LAWRENCE.

And the said David, as to the plea of the said George by him above pleaded by way of surrejoinder to the said plea of the said D. by him above pleaded, by way of rejoinder to the plea of the said G. by him pleaded by way of reply to the plea of the said D. thirdly above pleaded in bar, says, that by reason of any thing in the said surrejoinder he the said G. ought not to have or maintain his action against the said D.; because he says, that in and by the first article of the said treaty his said Britannic majesty acknowledges the said United States to be free, sovereign, and independent states, and that he treats with them as such; and that in and by the fifth article of the said treaty it is agreed by and between his said Britannic majesty and the said United States of A. that the congress of the United States should earnestly recommend it to the legislatures of the respective states to provide for the restitution of all estates, rights, and properties which have been confiscated belonging to great British subjects, and also the estates, rights, and properties of persons resident in districts in the possession of his majesty's arms, who had not borne arms against the said United States, and that persons of any other description should have free liberty to go to any part or parts of the said United States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights, and properties as might have been confiscated; and that congress should also recommend to the said several states a reconsideration and revision of acts and laws perfectly consistent not only with justice and equity but with that spirit of conciliation which on the return of the blessings of peace should universally prevail; and that congress should also earnestly recommend to the said several states, that the estates, rights, and properties of such last-mentioned persons should be restored to them, they refunding to any persons who might then at the time of making the said treaty be in possession, the *bonâ fide* price, where any had been given, which such persons might have paid on purchasing any of the said lands, rights, or properties since the confiscation; and it was also agreed by the said article last-men-

Rebutter, that by the fifth article of the treaty it is recommended to the states to reconsider and revise such laws, and make restitution of confiscated states on terms, &c.

DEBT.—ON BOND.—DEMURRER to REBUTTER.

tioned, that all persons who had then any interest in confiscated lands, either by deaths, marriages, settlements, or otherwise, should meet with no lawful impediment in the prosecution of their just rights: And the said D. further says, that the said G. at the time of the making the said law of the said state of New York in the said third plea mentioned, and also at the time of the making and signing the said definitive treaty of peace between his Britannic majesty and the United States, was resident in a district in the possession of his majesty's arms within the said state of New York, and had not borne arms against the said United States: And the said David further says, that in and by the sixth article of the said treaty it is agreed by and between his said Britannic majesty and the said United States of America, that there should be no confiscations made, nor any prosecutions commenced against any person or persons for or by reason of the part which he or they might have taken in the present war, and that no person should on that account suffer any future loss or damages either in his person, liberty, and property; and that those who might be in confinement on such charges at the time of the ratification of the said treaty in A. should be immediately set at liberty, and the prosecution so commenced to be discontinued; and so the said D. says, that by the said treaty the said several laws made and passed by the legislatures of the said respective states after the declaration of independency so made by them aforesaid, by the confiscation of the property within the said respective states were recognized and admitted to be valid; and this the said D. is ready to verify; wherefore he prays judgment if the said G. ought to have or maintain his said action against him the said D. &c.

S. LE BLANC.

Demurrer to the
Rebutter.

And the said G. as to the plea of the said D. by him pleaded by way of rebutter to the plea of the said George above pleaded, saith, that the said plea in manner and form as the same is above pleaded, and the matters therein contained, are not sufficient in law to bar the said G. from having and maintaining his aforesaid action thereof against the said D. to which said plea in manner and form above pleaded the said G. is not under any necessity, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify; wherefore for want of a sufficient plea in this behalf the said G. prays judgment and his said debt, together with his damages by reason of detaining the same, to be adjudged to him, &c.

S. LAWRENCE.

Order in de-
murrer.

And the said D. says, that the plea of him the said D. pleaded by way of rebutter to the plea of the said G. above pleaded, and the matters therein contained are sufficient in law to bar the said G. from having and maintaining his aforesaid action against the said D.; which said plea of him the said D. and the matters therein contained the said D. is ready to verify and prove as the court shall award; wherefore he prays, &c.

S. LE BLANC.

Easter

Easter Term, 29. Geo. III.

LONDON, to wit. John Erving, William Erving, George Erving, James Boudoin, and Oliver Wendall, executors of the last will and testament of John Erving deceased, put in their place John Barber their attorney, against Samuel Peters, clerk, executor of the last will and testament of Thomas Moffatt deceased, in a plea of debt. London, to wit. The said Samuel Peters puts in his place John Skirrow his attorney, at the suit of the said John Erving, William Erving, George Erving, James Boudoin, and Oliver Wendall, executors as aforesaid, in the plea aforesaid. London, to wit. Be it remembered that on Wednesday next after fifteen days from the day of Easter in this same term, before our lord the king at Westminster, come John Erving, William Erving, George Erving, James Boudoin, and Oliver Wendall, executors of the last will and testament of John Erving deceased, by John Barber, their attorney, and bring in the court of our said lord the king now here their bill against Samuel Peters, clerk, executor of the last will and testament of Thomas Moffatt deceased, being in the custody of the marshal of the Marshalsea of the lord the king, before the king himself, of a plea of debt, and there are pledges for the prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit: London, to wit. J. E. W. E. G. E. J. B. and O. W. executors of the last will and testament of J. E. deceased, complain of S. P. clerk, executor of the last will and testament of T. M. deceased, being in the custody of the marshal of the Marshalsea of our lord the now king, before the king himself, in a plea that he render to them the sum of one thousand four hundred and seventy seven pounds ten shillings of lawful money of Great Britain, which he unjustly detains from them; for that whereas the said Thomas Moffatt in his lifetime, to wit, on the twenty-ninth day of January, in the year of Our Lord 1765, at L. aforesaid, in the parish of St. Mary le-Bow, in the ward of Cheap, by his certain writing-obligatory, sealed with his seal, bearing date the day and year aforesaid, and to the court of our said lord the king now here shewn, acknowledged himself to be held and firmly bound to the said J. E. deceased, in his lifetime, in the sum of one thousand nine hundred and seventy pounds of lawful money of the province of Massachusetts bay, being of the value of the said sum of one thousand four hundred and seventy-seven pounds ten shillings of lawful money of Great Britain above demanded, to be paid to the said John Erving deceased, when he the said Thomas Moffatt should be thereto afterwards requested: Yet the said T. M. in his lifetime, and the said Samuel, executor as aforesaid, since the death of the said T. M. have not, nor hath either of them, although often requested, &c. paid the said sum of one thousand four hundred and seventy-seven pounds ten shillings above demanded, or any part thereof, to the said J. E. deceased, in his lifetime, or to the said John, William, George, James, and Oliver, executors as aforesaid, or

Warrant of attorney to prosecute.

To defend.

Memorandum.

Declaration by executors in debt on bond, against an executor.

any one of them since the death of the said J. E. deceased, but none of the said, or any part thereof, to the said J. E. deceased, in his lifetime, or to the said John, William, George, James, and Oliver, executors as aforesaid, since the death of the said John Erving deceased, the said Thomas Moffatt in his lifetime, and the said Samuel, executor as aforesaid, since the death of the said Thomas Moffatt, have and each of them hath hitherto altogether refused, and the said Samuel still refuses to pay the same to the said John, William, George, James, and Oliver, executors as aforesaid, to their damages as such executors of one hundred pounds, and therefore they bring suit, &c.; and the said John, William, George, James, and Oliver bring into court here the letters testamentary of the said John Erving deceased, which fully prove to the same court that they are executors of his last will and testament and have administration thereof, &c.

SAMUEL MARRYATT.

Plea.

And the said Samuel, as executor as aforesaid, by John Skirrow his attorney, comes and defends the wrong and injury, when, &c. and craves oyer of the said writing-obligatory in the said declaration mentioned, and it is read to him in these words, to wit: "Know all men by these presents, that we Thomas Moffatt, of Newport, in the county of Newport and colony of Rhode Island, physician, and John Moffatt, of Boston, in the county of Suffolk and province of the Massachusetts Bay, in New England, and William Smibert, of said Boston, physician, are holden and stand firmly bound and obliged unto John Erving, of Boston aforesaid, esquire, in the full and just sum of one thousand nine hundred and seventy pounds of lawful money of the province of the Massachusetts Bay, to be paid unto the said John Erving, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, in the whole, and for the whole firmly by these presents, sealed with our seals, dated the twenty-ninth day of January, A.D. 1765, and in the fifth year of his majesty's reign:" And the said Samuel, as executor as aforesaid, also craves oyer of the condition of the said writing obligatory, and it is read to him in these words, to wit, "The condition of this present obligation is such, that if the above bounden T. M. J. M. and W. S. their heirs, executors, or administrators, or any of them, shall and do well and truly pay or cause to be paid unto the said J. E. his executors, administrators, or assigns, the full and just sum of nine hundred and eighty-four pounds thirteen shillings and fourpence of lawful money of the province of the Massachusetts Bay, with lawful interest, on or before the twenty-ninth day of January, which will be in the year of Our Lord 1766, without fraud, covin, or further delay, then the above written obligation to be void and of none effect, or else to abide and remain in full force and virtue;" which being read and heard the said Samuel, as executor as aforesaid, says, that the said John, William, George, James, and Oliver,

PLEA BY EXECUTOR—PAYMENT.

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Oliver, as executors as aforesaid, ought not to have or maintain their aforesaid action thereof against him the said S. as executor as aforesaid; because he says, that the said writing-obligatory in the said declaration mentioned is not the deed of the said T. M. deceased, in manner and form as the said John, William, George, James, and Oliver, as executors as aforesaid, have in their said declaration in that behalf above alleged; and of this the said Samuel, as executor as aforesaid, puts himself upon the country, &c.; and the said John, William, George, James, and Oliver doth the like: And for further plea in this behalf, the said Samuel, as executor as aforesaid, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said John, William, George, James, and Oliver, as executors as aforesaid, ought not to have or maintain their aforesaid action against him the said Samuel, as executor as aforesaid; because he says that the said *Thomas Miffatt deceased, in his lifetime* [John Miffatt in the said writing-obligatory mentioned], after the making of the said writing-obligatory, and before the exhibiting of the bill of the said John, William, George, James, and Oliver, as executors as aforesaid, against the said Samuel, as executor as aforesaid, in this behalf, to wit, on the twenty ninth day of January, in the year of Our Lord 1776, at London aforesaid, in the parish and ward aforesaid, did pay to the said John Erving deceased, in his lifetime, the said sum of money in the said condition of the said writing-obligatory mentioned, with all interest then due for the same, according to the tenor [form] and effect of the said condition; and thus he the said Samuel, as executor as aforesaid, is ready to verify, wherefore he prays judgment if the said John, William, George, James, and Oliver, as executors as aforesaid, ought to have or maintain their aforesaid action thereof against him, &c.: And for a further plea in this behalf the said Samuel, as executor as aforesaid, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said J. W. G. J. and O. as executors as aforesaid, ought not to have or maintain their aforesaid action against him, because he says, that the said *J. Miffatt deceased, in his lifetime* [John Miffatt in the said writing-obligatory mentioned], after the making of the said writing-obligatory, and after the said twenty-ninth day of January, in the year of Our Lord 1766, in the said condition of the said writing-obligatory mentioned, and before the exhibiting of the bill of them the said John, William, George, James, and Oliver, as executors as aforesaid, against the said Samuel, as executor as aforesaid, in this behalf, to wit, on the first day of January, in the year of Our Lord 1767, at London aforesaid, in the parish and ward aforesaid, did pay to the said John Erving deceased, in his lifetime, the said sum of money in the said condition of the said writing-obligatory mentioned, together with all interest then due for the same, according to the form of the statute in such case made and provided; and thus he the said Samuel, as executor as aforesaid, is ready to verify; wherefore he prays

Non est factum.

2d Plea.

That testator *set out ad dem.*

3d Plea.

Soluit post mortem.

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G g

judgment

judgment if the said John, William, George, James, and Oliver, as executors as aforesaid, ought to have or maintain their aforesaid action thereof against him, &c. 4th Plea, *solvit ad diem*. 5th, *solvit post diem*, by John Mossatt, being like the 2d and 3d Pleas, except the alterations by omitting the words in Italic and inserting those within crotchets. 6th and last Pleas exactly like the 4th and 5th, except a substitution of the name William Smibert, the other surety, for that of John Mossatt.

Replication,
taking issue.

And the said John, William, George, James, and Oliver, executors as aforesaid, as to the said plea by the said Samuel, executor as aforesaid, *secondly* [fourthly] above pleaded in bar [the said John, William, George, James, and Oliver] say, that they by reason of any thing in that plea alledged ought not to be barred from having their aforesaid action thereof maintained against him; because they say that the said *Thomas Mossatt in his lifetime* [John Mossatt in the said writing-obligatory mentioned] did not pay unto the said John Erving deceased, in his lifetime, the said sum of money in the said condition of the said writing-obligatory mentioned, with the interest due for the same, according to the *tenor* [form] and effect of the said condition, as the said Samuel hath in his said last-mentioned plea alledged; and this he the said John, William, George, James, and Oliver pray may be enquired of by the country; and the said Samuel doth the like: And as to the said plea by the said Samuel *thirdly* [fifthly] above pleaded in bar the said John, William, George, James, and Oliver say, that they by reason of any thing in that plea alledged ought not to be barred from having their aforesaid action thereof maintained against him; because they say that the said *Thomas Mossatt deceased, in his lifetime*, [John Mossatt in the said writing-obligatory mentioned] did not pay to the said John Erving deceased, in his lifetime, the said sum of money in the said condition of the said writing-obligatory mentioned, together with the interest due for the same, according to the form of the statute in such case made and provided, as the said Samuel hath in his said last-mentioned plea alledged; and this the said John, William, George, James, and Oliver pray may be enquired of by the country, &c.; and the said Samuel doth the like. The replication to the 4th and 5th Pleas were similar to those to the 2d and 3d, except the alterations by omitting the words in Italic and inserting those within crotchets; and to the 6th and last Pleas exactly like those to the 2d and 3d, except the necessary variations in the number of the plea and the name of the surety supposed to have made the payment.

Therefore as well to try this issue as the said other issues above joined between the said parties, let a jury come before our lord the king at Westminster, on Monday next after the morrow of the Ascension, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

SAMUEL MARRYATT.

At

At which day, before our lord the king at Westminster, come the parties aforesaid, by their attorneys aforesaid, and the sheriffs have not returned the said writ, nor have they done any thing thereon, therefore let a jury thereupon come before our lord the king at Westminster, on Friday next after the morrow of the Holy Trinity, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.; afterwards, the process being continued between the parties aforesaid of the plea aforesaid, by the jury between them, being respited before our lord the king at Westminster until Wednesday next after three weeks of the Holy Trinity, unless the king's right trusty and well beloved Lloyd lord Kenyon, his majesty's chief justice assigned to hold the pleas in the said court, should first come on Tuesday the thirtieth day of July, at the Guildhall of the city of London, according to the form of the statute in such case made and provided for default of the said jurors, because none of them did appear; and now at this day, that is to say, on the said Wednesday next after three weeks of the Holy Trinity, before our lord the king at Westminster, come the parties aforesaid, by their attorneys aforesaid, and the said chief justice before whom the said issues were tried sent here the record before him had in these words, to wit, afterwards, that is to say, on the day and at the place within mentioned, before the right honourable Lloyd lord Kenyon, the chief justice within written, Roger Kenyon, esquire, being associated unto him by force of the statute in that case made and provided, come the within named John, William, George, James, and Oliver, executors as aforesaid, by their attorney within contained, and the within named Samuel, executor as aforesaid, although solemnly called, comes not but makes default; therefore let the jurors of the jury within named be taken against him by his default; and the jurors of that jury being summoned come, who to say the truth of the within contents being chosen, tried, and sworn, upon their oath say, as to the said issue between the parties aforesaid first within joined, that the within mentioned writing-obligatory is the deed of the within named Thomas Moffatt deceased, as the said John, William, George, James, and Oliver, executors as aforesaid, have in their declaration alleged: And as to the said issue between the parties aforesaid *secondly* [fourthly] within joined, the said jurors upon their oath aforesaid further say, that the *said Thomas Moffatt deceased, in his lifetime*, [within named John Moffatt] did not pay unto the *within named* [said] John Erving deceased, in his lifetime, the said sum of money in the [said] condition of the *said writing-obligatory mentioned*, with the interest due for the same, according to the *tenor* [form] and effect of the said condition, as the said John, William, George, James, and Oliver have in their replication in that behalf alleged: And as to the said issue between the said parties aforesaid *thirdly* [fifthly] within joined, the said jurors upon their oath aforesaid further say, that the *said Thomas* [John] *Moffatt deceased, in his lifetime*, did not pay to the said John Erving

DEBT ON BOND.—POSTEA—JUDGMENT.

deceased, in his lifetime, the said sum of money in the said condition mentioned, together with the interest due for the same, according to the form of the statute in such case made and provided, and the said John, William, George, James, and Oliver, executors as aforesaid, have in their replication in that behalf alledged. (The finding on the fourth and fifth issues was similar to that on the second and third, except the alterations by omitting the words in *Italic* and inserting those within crotchets; and on the sixth and last issues like that on the fourth and fifth, except the substitution of the name William Smibert for that of John Mossatt.) And they assents the damages of the said John, William, George, James, and Oliver, executors as aforesaid, by reason of the detention of the debt aforesaid, over and above the costs and charges by them about their suit in this behalf expended, to one shilling, and for those costs and charges to forty-nine shillings; therefore it is considered by the court here that the said John, William, George, James, and Oliver, executors as aforesaid, recover against the said Samuel, executor as aforesaid, the said debt, together with the said damages, costs, and charges by the said jury in form aforesaid assessed, and also ninety-two pounds nineteen shillings for their costs and charges of increase by the said court adjudged to the said John, William, George, James, and Oliver, executors as aforesaid, with their assent to be levied of the goods and chattels which were of the said J. Mossatt deceased, at the time of his death in the hands of the said Samuel to be administered; if he hath thereof in his hands to be administered, and if he has not so much thereof in his hands to be administered, then ninety-five pounds, being the amount of the said damages, costs, and charges in the whole, to be levied of the proper goods and chattels of the said Samuel; and the said Samuel in mercy, &c.

S. MARRYATT.

Judgment.

ON ANNUITY BONDS.

Declaration by the obligee against one of the obligors, on a bond, the condition of which was for the payment of an annuity, then the bond to be void, the annuity was suffered to run in arrears, whereby the bond became forfeited.

MIDDLESEX, to wit. Willis Martin complains of sir William Desic, knight, heretofore William Desic, esquire, being, &c. of a plea that he render to the said Willis eight hundred and forty pounds of &c.; for that whereas one A. K. and the said William, before he became a knight, by the name of W. D. of Queen's square, &c. esquire, &c. to wit, at, &c. by their certain writing-obligatory, sealed with their seals, and now shewn to his majesty's court here, the date whereof is the same day and year aforesaid, acknowledged themselves to be jointly and severally held and firmly bound to the said Willis in the sum of eight hundred and forty pounds, to be paid to the said Willis when they the said A. K. and sir William, then William D. esquire, should be thereto after-

wards

wards requested, with and under a certain condition thereto subscribed and underwritten, reciting, that whereas the above named Willis had contracted and agreed with the above bounden A. K. and W. D. for the absolute purchase of one annuity or clear yearly sum of sixty pounds of, &c. free from all taxes and deductions whatsoever, payable half yearly, for and during the natural life of him the said A. K. at and for the price or sum of four hundred and twenty pounds, and which said sum of four hundred and twenty pounds the said Willis had paid to the said A. K. and W. D. at the time of the execution of the said writing-obligatory; the condition of the said writing-obligatory was such, that if the said A. K. and W. D. or either of them, their heirs, &c. or any of them, did or should well and truly pay and cause to be paid unto the said W. his executors, &c. one annuity or clear yearly sum of sixty pounds of, &c. by two even and equal half yearly payments, the same annuity to be paid and payable at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, between the hours of ten and twelve of the clock in the forenoon, on the respective days and times thereafter mentioned, that is to say, on, &c. and, &c. from thenceforth in each and every year for and during the natural life of him the said A. K. without any deduction or abatement whatsoever, the first payment thereof to begin and be made on, &c. then next ensuing the date of the said writing-obligatory, then the said bond or obligation to be void, or else to remain in full force and effect, as by the said condition, reference being thereunto had, will more fully appear: And the said W. in fact further saith, that the said A. K. on, &c. was living, and that on that day in that year a large sum of money, to wit, the sum of one hundred and thirty-five pounds of the said annuity of sixty pounds for a certain space of time, to wit, for the space of two years, and one quarter of another year, ended on that day, became due and payable to the said W. by virtue of and according to the tenor of the said writing-obligatory and the condition thereof, and that the said sir William afterwards, to wit, on, &c. was requested by the said W. to pay the said sum of money last-mentioned so due and payable to him as aforesaid: Yet the said sir William did not, nor did the said A. K. on, &c. or at any other time whatsoever, pay the said sum of money, or any part thereof, to the said W. but therein wholly failed, and the said sum of money still remains in arrear and unpaid, to wit, at, &c.; whereby an action, &c.; nevertheless the said sir William, although often requested, &c. by the said W. hath not yet paid the said sum of eight hundred and forty pounds, or any part thereof, but the said sir William hath hitherto refused to pay the same, or any part thereof, to the said W. and still doth refuse so to do, to the said W. his damage of ten pounds; and therefore he brings his suit, &c. &c.

Defendant pleaded the general plea of bankruptcy, and that the cause of action accrued prior to that event. Replication,

that the cause of action did not accrue before the defendant became a bankrupt. —Verdict for the plaintiff.

DEBT ON ANNUITY BOND BY ADMINISTRATOR.

Declaration in debt on an annuity bond, made to the wife before coverture, for arrears of the annuity, brought by the husband after the death of his wife, as her administrator.

YORKSHIRE, to wit. Joseph Blanchard, administrator of all and singular the goods, chattels, and credits which were of A. B. deceased, at the time of her death, who died intestate, complains of T. H. being, &c. in a plea that he render to him the said Joseph four hundred pounds of, &c. which he unlawfully detains from him; for that whereas heretofore in the lifetime of the said A. B. and before her intermarriage with the said J. B. to wit, on, &c. at, &c. the said defendant by his certain writing-obligatory, then and there made, sealed with the seal of the said defendant, and now shewn to the court here, the date whereof is the day and year aforesaid, became held and firmly bound to the said A. B. by her then maiden name of A. H. of, &c. spinster, in the sum of four hundred pounds of, &c. to be paid to the said A. H. or her executors, administrators, or assigns, when he the said defendant should be therefore afterwards requested: Yet the said defendant, although often requested, hath not yet paid the said four hundred pounds to the said A. H. before her intermarriage with the said plaintiff, nor to the said A. and plaintiff, or either of them, since their said intermarriage, and in the lifetime of the said A. nor to the said plaintiff, administrator as aforesaid, since the death of the said A. (to which said plaintiff, after the death of the said A. to wit, on, &c. at, &c. administration of all and singular the goods, chattels, and credits which were of the said A. at the time of her death, by , by Divine Providence, archbishop of York, primate of England and metropolitan, to whom the committing of administration of right belonged, was in due manner committed) or to either of them, but he the said defendant refused to pay the said four hundred pounds in the lifetime of the said A. and since the death of the said A. hath refused, and still refuses to pay the same to the said Joseph, to the damage of the said plaintiff of fifty pounds; and therefore he brings his suit, &c.; and he also brings into court here the letters of administration of the said archbishop, the date whereof is the day and year in that behalf above-mentioned, which testify to the court here the committing of the administration in form aforesaid.

T. BARROW.

- e plea of payment to debt on annuity bond, and replication inserted by mistake, ante 359. and pleas, &c. in Debt. *post.*

ARBITRATION BOND.

Hilary Term, 29. Geo. III.

ESSEX, to wit. James Blatch, late of Sheering, in the county of Essex, yeoman, was summoned to answer John Haffler of a plea that he render to the said John Haffler one hundred pounds of lawful money of Great Britain, which he owes to and unjustly detains from him, &c. and thereupon the said John, by William Randle his attorney, complains; for that whereas the said James, on the fifteenth day of February, in the year of Our

(a) This declaration is in the common form, but the subsequent pleadings are material.

Lord

ON ARBITRATION BOND—PLEA.

Lord 1788, to wit, at Epping, in the said county, by his certain writing obligatory, sealed with the seal of the said James, became held and firmly bound to the said John in the sum of one hundred pounds, to be paid to the said John when he the said James should be thereto afterwards requested; yet the said James, although often requested, &c. hath not yet paid the said one hundred pounds, or any part thereof, to the said John, but he to pay the same hath hitherto wholly refused, and still doth refuse; wherefore the said John saith he is injured, and hath sustained damage to the value of ten pounds, and therefore he brings his suit, &c.; and the said John brings here into court the said writing-obligatory, sealed with the seal of the said James, which gives sufficient evidence of the debt aforesaid, in form aforesaid, the date whereof is the day and year aforesaid, &c.

And the aforesaid James, by John Jessup his attorney, comes and defends the force and injury, when, &c. and prays oyer of the said writing, and it is read to him, &c.; and he also prays oyer of the condition of the said writing, and it is read to him in these words, to wit, the condition of this obligation is such, that if the above [set out the condition, which was to perform an award], which being read and heard, the said James says, that the said John Haster ought not to have his aforesaid action thereof maintained against him, because he says, that the said Henry Baynes and Hugh Farling, the arbitrators in the said condition named, did not make any award between the said James and John in the said condition mentioned, according to the form and effect of the said condition; and thus he the said James is ready to verify; wherefore he prays judgment if the said John ought to have his aforesaid action thereof maintained against him, &c.

Plea that the arbitrators made no award.

C. RUNNINGTON.

And the said James, by John Jessup his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said writing-obligatory, and it is read to him in these words, to wit: The condition, &c. [set out the condition *verbatim*], which being read and heard, the said James says, that the said John Haster ought not to have or maintain his aforesaid action thereof against him; because he says, that the said Henry Baynes and Hugh Farling, in the said condition of the said writing-obligatory named, after the making of the said writing-obligatory, and before the fifteenth day of May then next, to wit, on the ninth day of April, in the year of Our Lord 1788, at Epping aforesaid, in the said county of Essex, took upon themselves the burthen of the execution of the said arbitrament in the said condition mentioned, and then and there did make and publish their award in writing, under their hands and seals, of and concerning the premises so to them referred as aforesaid, by which said award, (after reciting amongst other things that whereas divers actions, suits, and indictments were depending, and divers controversies had arisen between the said J. H. and James, as well touching a right of way

Another plea setting out the award, and averring performance.

claimed by the said John Hassler through a passage leading from Sheering-street in the said county of Essex, to a messuage and shop occupied by the said James, and also concerning certain assaults committed by the said parties) the said arbitrators did award and order that a part of a fence of the said John Hassler in front of his yard next to the street at Sheering aforesaid, at the end thereof where a butcher's pound formerly was, should be taken down by the said J. H. at or before the fourteenth day of May next, and a stile for foot-passengers set up and erected four feet high, with two steps on each side instead thereof, as the original footpath from Sheering street to Sheering church, and that the expence thereof should be borne equally between the said parties; and they did also award and order, that the said John Hassler should, on or before the said fourteenth day of May next, execute a release in due form of law to the said J. H. his heirs, and assigns, of all right and title which he had or claimed, or which his heirs or assigns might have or claim to the way or passage on the other side of the fence dividing his yard from the footpath which then led from the front door of the shop belonging to and occupied by the said J. B. into Sheering-street, or to the said messuage, and they did also award and order that the said James B. should, on or before the said fourteenth day of May then next, well and sufficiently fatten up and secure with nails the gate which he had made out of his said fence into the yard of the said J. H. and for ever after keep the same as a close fence, without having or claiming any gateway through the said fence into the said J. H.'s yard; and they did also award and order, that when the said stile was made in the fence in front of the said J. H.'s yard, it should be used by the said J. B. and Mary his wife and family, and his heirs, as the footway through the said yard unto his field and barn at the back of the said yard, *and that he and they should not make use of the said J. H.'s great gate out of Sheering street into the said yard as a cart and horse way into and out of the said field and barn of the said James B. and for the carrying of any goods to and from the said barn, AND NOT AS A FOOT-WAY*, and they did order and award that a lock should be put on the said gate belonging to the said J. H. and that the said J. H. and J. B. should each have a key thereof, and which lock and keys should be had at the equal expence of both parties, and in case either of the said parties should lose their key or lock, they did award and order that such party so losing such key or lock should provide another key or lock or two keys, as often as the case might require, at the expence of the party losing such key or lock; and finally, they did award and order that the expence of that their award should be borne equally by and between the said J. B. and J. H. and that each party should pay their own costs. and that they and each of them should on demand execute general releases to the other of them of all action and actions, cause and causes of action, indictments, trespasses, and demands whatsoever, from the beginning of the world to the fifteenth day of February then last past, being the day of their submission to their

This is the breach assigned in the replication.

Profect in error in the award.

PERFORMANCE, AND REPLICATION.

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their award, as by the said award which the said James now brings into court here fully appears: And the said James in fact says, that on the said fourteenth day of May next after making the said award, the said part of the said fence of the said J. H. in the said award mentioned, and thereby directed to be taken down as afore-said, had been and was taken down by the said J. H. and J. B. and a stile for foot-passengers had been and was then and there set up and erected four feet high, with two steps on each side instead thereof, as the original footpath from Sheering-street to Sheering church; and that the expence thereof was equally borne between the said parties; and that the said J. B. upon the said fourteenth day of May then past, did fasten up and secure, and had fastened up and secured with nails the gate which he had made out of his said fence in the yard of the said J. H. and hath for ever after from thence unto this kept the same as a close fence, without having or allowing any gateway through the said fence into the said J. H.'s yard, and that when and from the time when the said stile was made in the said fence in front of the said J. H.'s yard, it was and hath been used by the said J. B. and Mary his said wife and family, as the footway through the said yard into his said field and barn at the back of the said yard; and that he and they did only make and have only made use of the said J. H.'s great gate out of Sheering street into the said yard as a cart and horse way into and unto the field and barn of the said James Blatch, and for the purposes of carrying goats to and from the said barn, and not as a footway; and that a lock was placed on the great gate belonging to the said J. H. and that he the said J. B. and J. H. had each a key thereof, and that the said lock and keys were had at the equal expence of both parties, and that he the said J. B. hath not lost either the said key or lock and that the said J. B. hath borne an equal expence of the said award, and hath paid his own costs, and hath on demand executed a general release to the said J. H. of all action and actions, cause and causes of action, indictments, trespasses, and demands whatsoever, from the beginning of the world to the said fifteenth day of February then last past, being the day of their said submission to the said award in manner and form as in and by the said award is directed, and according to the true intent and meaning thereof, and of the condition of the said writing-obligatory, to wit, at London aforesaid, in the said county of Essex; and this he the said J. B. is ready to verify; wherefore he prays judgment if the said J. H. ought to have or maintain his aforesaid action thereof against him, &c.

This is denied in the replication.

C. RUNNINGTON.

And the said J. H. as to the said plea of the said James by him above pleaded in bar, says, that he, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining his aforesaid action thereof against him the said James; because he saith, that after the said award and order in the said plea mentioned had been and was so made as aforesaid, and after the stile

Replication, shewing a particular breach and concluding with a verification.

in

in the said award and plea mentioned had been and was made in the premises in front in the said J. H.'s yard, to wit, on the twenty-seventh day of May, in the year of Our Lord 1788, and on divers other days and times between that day and the day of issuing forth of the original writ of the said John in this behalf, to wit, at Epping aforesaid, in the said county of Essex, the said *James and Mary his wife* did make use of the said J. H.'s great gate out of *Sheering-street* into the said yard of the said J. H. in the said award and plea mentioned, in other manner than as a cart and horse way unto and into the said field and barn, and for the purpose of carrying goods to and from the said barn, that is to say, by then and there, at and upon these several days and times going, passing, and repassing through the said J. H.'s great gate out of *Sheering-street* into the said yard on foot, and using the same on those several days and times as a footway, contrary to the term, tenor, and effect of the said award, whereby the condition of the said writing-obligatory became and was broken and forfeited, and the said writing-obligatory in full force and virtue; and this he the said J. H. is ready to verify; wherefore he prays judgment and the debt aforesaid, together with his damages by him sustained on occasion of the detaining thereof, to be adjudged to him, &c.

GEORGE BOND.

Rejoinder, taking issue on the breach assigned in the replication.

And the said James, as to the said plea of the said J. H. by him above pleaded by way of reply to the said plea of the said James by him above pleaded in bar, says, that the said James and Mary his wife did not, nor did either of them make use of the said J. H.'s great gate out of *Sheering-street* into the said yard of the said J. H. in the said award and plea mentioned, in other manner than as a cart and horse way unto and into the said field and barn of the said J. H. in the said award and plea mentioned, and for the purpose of carrying goods to and from the said barn, as the said J. H. hath above in his said plea by him above pleaded by way of reply in that behalf alleged; and of this he the said James puts himself upon the country, &c.

I think the plaintiff has made the doing; and have therefore taken issue upon the finding of the way in question merely as a footway material, by replying a-he has

T. BARROW.

Plea to debt on arbitration bond, no award made.

AND the said John and Philip, by Richard Way their attorney, come and defend the wrong and jury, when, &c. and crave oyer of the said writing-obligatory, and it is read to them; they also crave oyer of the condition of the said writing-obligatory, and it is read to them in these words, that is to say, the condition of this obligation is such, that if he above-bounden J. R. and Ph. B. their heirs, executors, and administrators, or either of them on their parts and behalfs shall and do in all things well and truly stand to obey,

PLEA—REPLICATION.

obey, abide, perform, fulfil, and keep the award, order, arbitration, final end and determination of J. D. of the parish of G. in the said county, engineer, James Jenkin, of the parish of C. aforesaid, yeoman, and John Jenkin of the same, yeoman, or any two of them, arbitrators indifferently elected and named, as well on the part and behalf of the above-bounden John Rupe and Ph. B. as of the above-named William J. and William Stevens, to arbitrate, award, order, judge, and determine of and concerning all and all manner of action and actions, cause and causes of action, suits, wills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by and between the said parties, or either of them, so as the said award be made in remitting under the hands and seals of the said arbitrators, or any two of them, and ready to be delivered to the parties in difference, or such of them as shall desire the same, on or before the twenty-fifth of January next, then this obligation to be void, or else to remain in full force; which being read and heard, the said J. and P. saith, that the said William J. and William S. ought not to have or maintain their aforesaid action thereof against them; because they say, that the said arbitrators in the said condition named did not, nor did any two of them at any time on or before the said twenty-fifth of January mentioned in the said condition, make any award in writing under their hands and seals, or the hands and seals of any two of them of or concerning the premises in the said condition mentioned, and so referred as aforesaid, ready to be delivered to the said parties in difference, or such of them as should desire the same; and this they are ready to verify; therefore they pray judgment if the said William J. and William S. ought to have or maintain their aforesaid action against them, &c.

J. DUNNING.

And the said W. J. and W. S. as to the said plea of the said Replication.
John and Philip by them above pleaded in bar, say, that they, by any thing above in that plea alledged, ought not to be barred from having or maintaining their aforesaid action thereof against the said John and P.; because they say, that the said James J. and John J. two of the said arbitrators in the said condition of the said writing-obligatory named, after the making of the said writing-obligatory, and before the twenty-fifth of January in the said condition of the said writing-obligatory mentioned, to wit, on the twenty-second of January A. D. 1765, at T. aforesaid, having taken upon themselves the burthen of the said arbitration on the same day and year last aforesaid, at T. aforesaid, made their award of and concerning the premises aforesaid, so referred to them as aforesaid in writing under their hands and seals, then and there ready to be delivered to the said parties in difference, or such of them as did or should desire the same; and by the said award they the said James J. and
Joan

DEBT ON ARBITRATION BOND—REJOINDER.

John J. the said two of the arbitrators aforesaid, did award, order, arbitrate, and determine, that all actions, suits, and prosecutions either in law or equity, commenced, brought, or defending by and between the said parties in difference before the date of the said above-mentioned bond or obligation should from thenceforth cease, and be no further prosecuted or proceeded in, and the said James J. and John J. the said two of the arbitrators, did by their said award also thereby award and order that the said John R. and Ph. B. did and should jointly and severally, on or before the second of March then next ensuing the date of the said award, in due form of law execute unto the said W. J. and William S. jointly and severally a general release of all actions, suits, differences, trespasses, damages, claims, and demands whatsoever, from the beginning of the world to the date of the said bond or obligation; and that they the said John R. and Ph. B. or one of them, did and should, between the hours of two and four of the clock in the afternoon of the second day of March then next, at or in the then dwelling house of P. Eustace, innkeeper, within the parish of Crowan aforesaid, well and truly pay, or cause to be paid unto the said W. J. and W. S. or to one of them the sum of thirty-eight pounds of lawful, &c.; and that they the said W. J. and W. S. did and should immediately after the payment of the said sum of thirty-eight pounds to them the said W. J. and W. S. or one of them, by the said John R. and Philip B. as aforesaid, in due form of law jointly and severally execute unto the said John R. and Philip B. jointly and severally a general release of all actions, suits, differences, damages, claims, and demands whatsoever, from the beginning of the world to the day of the date of the bond or obligation: And the said W. J. and W. S. further say, that they the said John R. and Philip B. or either of them, did not between the hours of two and four o'clock in the afternoon, on the second day of March, in the said award for that purpose, or at any other time whatsoever, at or in the said dwelling-house of the said P. E. innkeeper, within the parish of C. aforesaid, or at any other place whatsoever, pay, or cause to be paid unto the said William J. and W. S. or either, the said sum of thirty-eight pounds in and by the said award, ordered and awarded to be paid to the said W. J. and W. S. or one of them as aforesaid, or any part thereof; but they the said John R. and Philip B. have, and each of them hath hitherto wholly refused so to do, and therein have and each of them hath wholly failed and made default, contrary to the form and effect of the said writing-obligatory; and this they the said W. J. and W. S. are ready to verify; wherefore they pray judgment and their debt aforesaid, together with their damage by occasion of detaining from the said W. J. and W. S. to be adjudged to them, &c.

Rejoinder.

And the said John and Philip say, that the said James and John did not make any such award of or concerning the premises aforesaid,

PLEA.—REPLICATION.

aforesaid, as the said William T. and W. S. have above in replying alledged; and of this they put themselves upon the country, &c.

DECLARATION in debt on arbitration bond for fifty pounds, in the common form. **Declaration.**

And the said Thomas, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said writing-obligatory, and it is read to him in these words, to wit, &c. he likewise prays oyer of the condition of the said writing-obligatory, and it is read to him in these words, that is to say, the condition of, &c.: (the condition of the bond was that the parties had submitted to the arbitration of A. B. C. D. and E. F. and that they were to make their award on or before the twenty-fourth day of December) which being read and heard, the said Thomas says *actio non*; because he says, that the said arbitrators mentioned in the said condition, or any two of them, did not on or before the twenty-fourth day of December, mentioned in the said condition, make any award in writing of or concerning the matters above referred to them by the said plaintiffs and defendant; and this, &c. wherefore, &c. if, &c.

**Plea there-
oyer of con-
dition, which
for keeping
award, and
the arbitra-
made no award.**

And the said John, as to the said plea of the said Thomas by him above pleaded in bar, says, that he by reason of any thing by the said Thomas in that plea above alledged, ought not to be barred from having his aforesaid action thereof maintained against him, &c. because he says, that the said A. B. and C. D. two of the aforesaid arbitrators in the said condition of the said writing-obligatory named, after the making of the said writing-obligatory, and within the time limited and appointed by the said condition for the making of their award of and concerning the premises aforesaid, that is to say, on, &c. being the said twenty-fourth day of, &c. in the said condition mentioned, at, &c. having taken upon themselves the burthen of this award, did in due manner make their award in writing, under their hands and seals, of and concerning the premises in the said condition mentioned, and thereby referred to them by the said plaintiff and defendant, ready to be delivered to the parties in difference, or such of them as should desire the same, by which said award they the said A. B. and C. D. two of the arbitrators aforesaid, did then and there award and order that, &c. &c. [set forth the award] of which said award the said Thomas afterwards, to wit, on, &c. at, &c. had notice, and for assigning several breaches of the said award in the said condition of the said writing-obligatory mentioned in the several matters and things therein contained on the part and behalf of the said Thomas to be performed, fulfilled, and kept according to the form of the statute in such case made and provided, the said John says, that the costs due to N. O. gentleman, his said

**Replication,
setting forth
award, and
signing by
of non-pay-
of money
warded.**

DEBT ON ARBITRATION BOND.

said plaintiff's attorney, for carrying on the said prosecutions in the said award mentioned against the said Thomas, amounted to a large sum of money, to wit, the sum of thirty pounds of lawful, &c. whereof the said Thomas afterwards, to wit, on, &c. at, &c. had notice; yet the said Thomas did not at any time before the said first day of June next after the making of the said award, pay, or cause to be paid the aforesaid costs, or any part thereof, either to him, or to his said attorney, the said N. O.; but hath therein wholly failed and made default, to wit, at, &c. contrary to the form and effect of the said award in that behalf made as aforesaid: And for a further breach of the said award in the said condition mentioned, according to the form of the aforesaid statute, the said plaintiff says, that the said Thomas did not on or before the said first day of, &c. next after the making of the aforesaid award, pay, or cause to be paid the said sum of one pound and threepence of, &c. to him the said plaintiff, nor hath he yet paid the same, or any part thereof to him, but hath therein wholly failed and made default, contrary to the form and effect of the said award in that behalf made as aforesaid: And this, &c. wherefore, &c. and his debt aforesaid, together with his damages by reason of the detaining thereof to be adjudged to him, &c.

In this replication it is necessary not only to shew an award made, but also a breach, 5. Com. 104. It would have

been good had it assigned a breach as to the non payment of the one pound and threepence only. 2. Will. 267.

Michaelmas Term, 34. Geo. III.

**Debt on arbitra-
tion bond.**

YORKSHIRE, to wit. James Bell, the elder, complains against John Wilkinson, being in the custody of the marshall of the marshalsea of our sovereign lord the now king, before the king himself, of a plea that he render to him the said James two hundred pounds of lawful money of Great Britain, which he owes to and unjustly detains from him; for that whereas the said John on the twenty-fourth day of January, in the year of Our Lord 1797, at Settle, in the county of York, by his certain writing-obligatory, sealed with the seal of the said John, and now shewn to his majesty's court here, the date whereof is on the day and year aforesaid, acknowledged himself to be held and firmly bound unto the said James by the name and description of James Bell, of Ellsack, in the parish of Broughton, in the said county, yeoman, in the sum of two hundred pounds, to be paid to the said James when he the said John should be thereunto afterwards requested; yet the said John, although often requested, hath not yet paid the said sum of two hundred pounds above demanded, or any part thereof, to the said James; but to pay the same, or any part thereof, to the said James, he the said John hath hitherto wholly refused, to the damage of the said James of ten pounds, and therefore he brings his suit, &c.; pledges, &c.

Hilary

Hilary Term, 34. Geo. III.

WILKINSON } To wit. And the said John, by Charles Owen, Plea no award
at suit of } his attorney, comes and defends the wrong and
BELL. } injury, when, &c. and craves oyer of the said
writing-obligatory, which is read to him in these words, to wit,
[here set out the bond in *hæc verba*] he also craves oyer of the
condition of the said writing-obligatory, which is read to him in
these words, to wit, [here set out the condition of the bond *ver-*
batim] which being read and heard, the said John says, that the
said James ought not to have or maintain his aforesaid action
thereof against him, because he says, that the said arbitrators in
the said condition of the said writing-obligatory named, made no
award in writing under their hands within the time limited in the
said condition of the said writing-obligatory, nor did the said
R. W. in the said condition of the said writing-obligatory men-
tioned as umpire in that event, make any award or umpirage in
the premises in writing from and under his hand within the time
for that purpose in the said condition of the said writing obligatory
expressed, nor did the said arbitrators chuse any other umpire;
and this the said John is ready to verify; wherefore he prays judg-
ment if the said James ought to have or maintain his aforesaid
action thereof against him.

T. BARROW.

Hilary Term, 34. Geo. 3.

BELL } And the said James Bell, as to the said plea of Replication.
at suit of } J. W. by him above pleaded, says, that he, by
WILKINSON. } reason of any thing therein contained, ought not
to be barred from having and maintaining his aforesaid action
against the said J. W. because he says, that although true it is
that the said S. A. and J. C. the said arbitrators in the said con-
dition of the said writing-obligatory mentioned, made no award in
writing of and concerning the premises under their hands within
the time for that purpose limited in the said condition of the said
writing-obligatory, as in the said plea is mentioned; nevertheless,
for replication in this behalf, the said James says, that after the
expiration of the said time limited for the said S. A. and J. C. the
said arbitrators, making the said award, and before the first day of
April next after the making of the said writing-obligatory, to wit,
on the thirty-first day of March, in the year of Our Lord 1792,
at S. aforesaid, in the county aforesaid, the said R. W. the umpire,
in the said condition of the said writing-obligatory named,
having taken upon himself the burthen of the said award, and hav-
ing fully examined and duly considered the premises submitted and
referred as aforesaid, made his award or umpirage in writing, sub-
scribed with his own hand, in manner following, that is to say,
first the said Richard Wilson did thereby award, that the ac-
tion then depending between the said parties, and all matters
in difference between them should cease, and be no further pro-
secuted, and also that the said J. B. should on or before the first
day

DEBT ON ARBITRATION BOND.—REPLICATION.

day of May then next, at the house of R. B. the sign of the Hole in the Wall, in Thornton, in the county of York, between the hours of twelve and three of the clock in the afternoon of the same day, pay, or cause to be paid unto the said James W. for the use of T. R. esquire, guardian and trustee of H. R. and M. R. infants, the sum of fifty-five pounds ten shillings of like lawful money of Great Britain, in full of all rent, and arrears of rent due from the said J. B. for the farm and premises he then held under them, within the parish of Thornton aforesaid, on the twenty-second day of November then last past, after deducting thereout the sum of thirty-five pounds ten shillings, as in and for the said J. B. his damages, costs, and charges in the said cause, and as and for his costs, charges, and expences of attending the arbitration; and lastly, it appearing to the said R. W. from the evidence produced upon the said arbitration, that he said J. B. had contracted with the said J. W. and C. G. of Newton-Grange, in the county of York, aforesaid, gentlemen, his trustee, for a farm called the Hague farm, within the townships of Thornton aforesaid, at the rent of thirty-seven pounds *per annum*, payable at Whitfuntide and Martinmas, the first payment to be made at Whitfuntide next after the time of entry, which was to be on the twenty fifth day of March 1790, to hold the same for the term of nine years, in case the youngest daughter of the said T. R. should so long live, and in case she should die before she attains the age of twenty-one years, for and during the term of seven years, or so much longer as she should live, not exceeding the said term of nine years, and it also appeared from the evidence produced, that the said John W. and C. G. were forthwith to put the premises into good and tenantable repair at their own expence; the said R. W. did thereby further award and order that the said J. W. should, on or before the twenty-ninth day of September then next at his own expence, or out of the rents and profits of the said premises, put the said premises into such good and tenantable repair according to the contract so entered in to as aforesaid, and should deliver up possession of two cottage houses, part of the said farm on or before the twelfth day of May then next, to the said J. B. and the said R. W. did thereby further award and order that the said J. B. should continue to occupy the whole of his said farm during the time aforesaid, according to the contract made with the said J. W. and C. G. he the said J. B. paying the said yearly rent of thirty seven pounds, as the same should from time to time become due, and cultivate and manage the farm in a proper and husbandlike manner, according to the custom and usage of that part of the country, and not to plow any greater or other part of the said farm than has usually been in tillage, and to plow the same in fair and regular shifts; and the said R. W. did further award and order that the said J. B. and J. W. and each of them, on payment of the sum of twenty pounds by the said J. B. to the said J. W. being the balance of the rent, damages, and costs aforesaid, should in due form of law execute each to the other of them,

REPLICATION.—*DEMUERCK v. REPLY*

them, or to the others general releases, sufficient in the law, for the releasing by each to the other of them, his and their heirs, executors, and administrators of all actions, suits, arrests, quarrels, controversies, and demands whatsoever touching or concerning the premises aforesaid, or any thing relating thereto, up to the twenty-fourth day of January then last past: And the said J. B. in fact saith, that on the first day of May next after making the said award or umpirage, he the said J. B. was at the said house of the said R. B. in T. aforesaid, in the said award or umpirage specified, between the hours of twelve and three in the afternoon of the same day, and was then and there ready and willing to have paid, and would then and there have paid unto the said J. W. for the use of the said T. R. esquire, in the said award or umpirage named, if the said J. W. had been there to receive the same, the said sum of fifty pounds ten shillings of lawful money of Great Britain, in full of all rent, and arrears of rent due from the said J. B. for the said farm and premises in the said award or umpirage mentioned, on the twenty-second day of November then last past, after deducting thereout the sum of thirty-five pounds ten shillings as and for the said J. B.'s damages, costs, and charges in the said cause in the said award or umpirage mentioned, and as and for his costs, charges, and expences of and attending the said arbitration, but the said J. B. in fact saith, that the said J. W. did not attend, nor did any person for him on his behalf attend, at the said time and place in the said award or umpirage in that behalf mentioned, to receive the said sum of money so awarded to be paid by the said J. B. as aforesaid, nor hath the said J. W. at any time since hitherto received the same, although the said J. B. hath always been ready and willing to pay the same to the said John Wilkinson, according to the true intent and meaning of the said award or umpirage, to wit, at S. aforesaid, in the county aforesaid; and this the said J. B. is ready to verify; wherefore he prays judgment and his debt aforesaid, together with his damages by reason of the deduction thereof, to be adjudged to him, &c.

W. WALTON.

Hilary Term, 34. Geo. III.

WILKINSON } To wit. And the said John, as to the said plea *Demoerck*
at suit of } of the said James, by him above pleaded in reply
BELL. } to the said plea of the said John, by him above
pleaded in bar, says, that the said plea so above pleaded and the matters therein contained are not sufficient in law to maintain the said action of the said James against the said John, to which said replication in manner and form as the same is above pleaded and set forth, the said John is under no necessity, nor is he obliged by the law of the land to answer; wherefore for want of a sufficient replication in this behalf the said John as before prays judgment, and that the said James may be precluded from having and maintaining his aforesaid action against the said John.

THOMAS BARROW.

DEBT ON BAIL BONDS.

At present under the circumstances of this case, the defendant must demur to prevent the plaintiff from going to trial the ensuing Yorkshire assizes, whether the plea may or may not be objectionable

in point of substance; but I think it very doubtful whether the plea can be supported in point of law.

T. BARROW.

ON BAIL BONDS.

Declaration in
Debt on an af-
firmment of a
bail bond.

MIDDLESEX, to wit. A. B. assignee of E. S. esquire, sheriff of the county of Surry, according to the form of the statute in such case made and provided, complains of E. W. (a) being in the custody of the marshal of the marshalsea of our lord the king, before the king himself, of a plea that he render to him of sixty-three pounds of lawful, &c. which he owes to and unjustly detains from him; for that whereas one E. W. heretofore, to wit, on, (b) &c. at, &c. had been and was arrested by, and was then and there in the custody of the said E. S. as such sheriff of the said county of S. as aforesaid, under and by virtue of a certain writ of our said lord the king called a *latitat*, before then, to wit, on, &c. in the year of the reign, &c. issued out of the court of our said lord the king, before the king himself, against the said E. W. by and at the suit of the said plaintiff, directed to the sheriff of Surry, by (c) which said writ our said lord the king commanded the said sheriff of S. that he should take the said E. W. if he might be found in his bailiwick, and him safely keep, so that he might have his body before our said lord the king at Westminster, on, &c. then next following, to answer to the said A. B. in a plea of trespass, and also to a bill of the said A. B. to be exhibited against the said E. W. according to the custom of the said court of our said lord the king, before the king himself, for sixty pounds upon promises, and that the said then sheriff should then have there that writ (d), which said writ had been and was duly indorsed for bail for thirty pounds, by virtue of an affidavit of the cause of action before then made and duly assised in the said court of our said lord the king, before the king himself, according to the form of the statute in such case made and provided: And the said plaintiff in fact further saith, that the said E. W. being so arrested and in custody of the said E. S. being sheriff as aforesaid, at the suit of the said J. by virtue of the said writ as aforesaid, he the said E. S.

(a) An action on a bail bond must be brought in the same court where the bail was given. 3. Burr. 1923. in B. R. and like point in C. P. 3; Will. 348.

(b) In B. R. 10. Geo. III. Hunt, assignee, v. Kingston, on bail bond, the writ was alleged to be sued out in vacation, yet held good. Lord Rayn. 1557.

3. Burr. 256., but it was not alleged to have been sued out of the court then held at Westminster, for then it should seem to be bad upon a special *demurrer*.

(c) Need not of necessity be set forth. 1. Burr. 332.

(d) Must be set forth. 4. Bac. Abr. 19.

BY ASSIGNEE OF BAIL BONDS.

being sheriff as aforesaid, afterwards and before the return of the said writ, to wit, on the day and year last-mentioned, at, &c. in, &c. and within his bailiwick, as such sheriff as aforesaid, took bail for the appearance of the said E. W. at the return of the said writ, according to the exigency of the said writ (a), and on that occasion the said E. W. by his certain writing-obligatory commonly called a bail bond, sealed with the seal of the said E. W. and now shewn to the court of our said lord the king, before the king himself, the date whereof is the day and year last aforesaid, acknowledged himself to be held and firmly bound to the said E. sheriff of the said county of S. by the name of E. S. esquire, sheriff of the said county, in sixty-three pounds of good and lawful money of Great Britain, to be paid to the said E. S. or his certain attorney, executors, administrators, or assigns, subject to and dependent nevertheless upon a certain condition to the said writing-obligatory, subscribed to the effect following, that if the said E. W. should appear before our said lord the king at Westminster, on, &c. next after , to answer to the said A. B. in a plea of trespass, and also to a bill of the said A. B. to be exhibited against the said E. W. according to the custom of the court of our said lord the king, before the king himself, for sixty pounds upon promises, then that obligation to be void and of no force, otherwise should stand and remain in full force, vigour, and effect, as in and by the said writing-obligatory, and the condition thereof, relation being thereunto had, may more fully appear: And the said A. B. in fact says, that the said E. W. (b) did not appear before our said lord the king at Westminster on, &c. next after , in the condition of the said writing-obligatory mentioned, according to the exigency of the said writ, whereby the said writing-obligatory became forfeited to the said sheriff: And the said A. B. further saith, that the said writing-obligatory being so forfeited, and the money therein specified, or any part thereof, not being paid or satisfied to the said sheriff, he the said sheriff afterwards, to wit, on, &c. at, &c. in, &c. at the request, costs, and charges of the said A. B. plaintiff in that suit, by an indorsement on the said writing-obligatory made and attested in the presence of two credible witnesses, and sealed with his seal of his office of sheriff, assigned the said writing-obligatory to the said A. B. according to the form of the statute in that case made and provided, as by the said assignment indorsed on the said writing-obligatory as aforesaid, and duly stamped before the exhibiting the bill of the said A. B. against the said E. W. according to the form of the statute in such case made and provided, and now shewn to the said court of our said lord the king, before the king himself here, the date whereof is the day and year aforesaid, more fully appears; by means whereof and by

Not necessary
1. W.B. 211

(a) I think this had better be omitted, lest it should embarrass the plaintiff in evidence.

(b) Breach of condition should be positively alleged, and that too in the

words of the condition, and not according to the form of the condition, for that is only matter of conclusion, and not of fact. Gilb. Cal. 77.

DEBT ON BAIL BOND—REPLICATION.

force of the statute in such case made and provided, an action hath accrued to the said A. B. as assignee of the said E. S. esquire, sheriff of the said county of S. to demand and have of and from the said E. W. the said sixty three pounds above demanded; yet the said E. W. although often requested, hath not yet paid the said sixty-three pounds above demanded, or any part thereof, but he so to do hath hitherto wholly refused, and still refuses, to the damage of the said A. B. assignee as aforesaid, of ten pounds, and therefore he brings his suit.

V. LAWES.

(a) Replication AND the said E. says, that he, by reason, &c. *precludi non*; (to a plea to a because he says that the said J. A. before the return of the said declaration on a writ in the said declaration mentioned, to wit, on the day of the bail bond against the date of the said writing-obligatory in the said declaration mentioned, to wit, on, &c. at, &c. as bail or surety for the appearance of the said J. J. at the return of the said writ, sealed, and as his act and deed delivered the said writing-obligatory in the said declaration mentioned, in manner and form as the said plaintiff hath above complained against him the said defendant; without this that the said writing-obligatory in the said declaration mentioned was sealed by the said J. J. and as his act and deed delivered after the return of the said writ in the said declaration mentioned, in manner, &c. as the said defendant hath above in his said plea in that behalf alledged; and this, &c.; wherefore, &c. and his debt aforesaid, together with his damages sustained on occasion of the detention thereof, to be adjudged to him, &c.

Defendant
pleaded the statute of 23. Hen.
6. c. 29.

(a) See Statutes pleaded in Debt, *post*,—Plea, 479 *post*.

This was an action of debt upon a bail bond, to which the defendant pleaded the statute 23. H. 6. c. 29 and the plaintiff replied that the bond was given for the appearance of the principal at the return of the writ mentioned in the plea, and traversed *aliquo hoc*, that it was given for ease and favour *in modo et forma*. To this replication Mr Baldwin demurred, and assigned for causes as follows, viz for that the traverse in the said replication contained, denying the whole substance of the plea of the said defendant, concludes with a *verification* and to the court, whereas it ought to have concluded to the country; and for that the said replication is calculated to introduce an unnecessary length of pleadings, and for that the same is in various other respects informal. &c.

The plaintiff joined in demurrer, and

in Hilary term, 19. Geo. 3. it was argued by Mr Baldwin for it, and Mr Morgan against it. It is certain that nothing but very old precedents could be offered in support of the replication, for it indisputably tended to an unnecessary length of pleadings, and therefore the Court was unanimous against it; but however liable to objection the replication might have been for this cause, it does not appear to me that the first cause of demurrer was open to the objection, and well assigned, for the fault does not seem to lie in the conclusion of the replication, for that is perfectly agreeable to the rules of pleading, 2 Str. 87 but in the inducement to the traverse which necessarily occasioned such a conclusion; and therefore I should conceive that the following causes would have been more pertinent and proper (a), for that inasmuch as the

(a) Assigned in Smith and others v. Davies, Easter term, 20. Geo. III. Replication to a plea of statute of usury. Inducement that the bill was for a bona fide consideration.

said

DEBT, &c.—REJOINDERS—PLEA.

46

said traverse in the said replication contained denies the whole substance of the plea of the said defendant, no inducement to the facts was necessary or requisite; nevertheless the said plaintiff hath, by an unnecessary and superfluous inducement to such traverse, rendered a conclusion of the said replication with a verification, and to the court necessary, and hath thereby concluded this replication, for the introduction of an unnecessary length of pleadings; and for that the inducement to the traverse in the said replication contained containing no new matter, is in itself wholly immaterial, superfluous, and unnecessary, and tends to proximity of pleadings, and for that the said replication is in other respects informal, &c.

However, Mr Moreau had recourse to the plea, and argued against it, as

well upon a misrecital of the statute, which he contended was a public *(b)* one, as for alledging matters *dehors* the deed, after having shewn it to be good at the time of the commencement, and therefore repugnant as to the former of these grounds. He relied upon Cro. Eliz. 236. 245. Cro. Car. 136. 232. 2 Mod. 98. 9. Freem. 311. and Lord Raym. 382. ; and as to the latter, upon the case of Collins v. Blanton, 2. Wilf. 352. the court being with him on both these grounds, and it being a rule in pleading, that whoever makes the first fault in pleading shall have judgment against him, 2. Wilf. 100. judgment was given for the plaintiff, and Lord Mansfield added, that if a party will undertake to recite a public statute, he shall be tied down to do it *verbatim et literatim*.

(b) It is said to be a particular one in Gilb. Law of Evidence, 47. and in 2. Burr. 928. the proper distinction, to wit, that in cases arising immediately on the act, as the form of the bail bond it must be pleaded, but in cases that are general in their nature, and in which the statute is only an affirmation of the common law as whether a man shall be admitted to bail or not, the judges will take notice of it officially seems to be laid down, and which seems to militate against the decision in this case.

And the said defendant (as before) says, that the said writ *g- Rejoinder to the obligatory* (take the words in *italic* in the replication); and *of last replication.* thus he the said defendant puts himself upon the country, &c.

Rejoining as usual that he the said defendant, before the first Rejoinder of day of January, to wit, on, &c. A. D. 1775, was arrested and in duplicate, having actual custody of an officer belonging to the sheriff of Middlesex, ing been in for one hundred pounds, at the suit of one A. B. by virtue of a custody of an certain writ of our lord the now king called a *capias*, issuing out officer, and sure rendered in dis- of the court of our lord the king of the bench at Westminster, in charge of bail, the county of Middlesex, in a certain plea, to wit, a plea of trespass. &c. pafs on the case upon promises, and was held to bail thereon for pounds; and that he the said defendant afterwards and before the twenty-sixth day of, &c. A. D. 1776, to wit, on, &c. did surrender himself in discharge of his bail, and was thereupon duly committed to his majesty's prison of the Fleet in London aforesaid, to wit, in the parish and ward aforesaid, at the suit of the said A. B.; and that he the said defendant afterwards, to wit, at, &c. [Every thing subsequent, as Statutes pleaded in Debt, *pass.*]

J. MORGAN.

Plea, appearance of principal at the day pleaded in discharge of bail, to an action on a bail bond.

AND the said J. B. by A. B. his attorney, comes, &c. *affio non*; because he says, that the said W. P. did appear before our said lord the king at Westminster, on, &c. next after, &c. mentioned in the said condition, according to the form and effect of the said condition, as by the record of the said appearance remaining in the said court of, &c. at Westminster more fully appears; and this he is ready to verify by the said record; wherefore, &c.

Replication thereto.

And the said D. says, that he, by reason of any thing by the said J. above in pleading alledged, ought not to be barred from having his afore said action thereof maintained against the said J.; because he says that there is not any such record of appearance of the said B. remaining in the said court of, &c. as the said J. hath above in his said plea in that behalf alledged; and this, &c. when and where, and in what manner the court here shall order; and (a) thereupon the said J. is commanded by the court here that he produce the said record before our said lord, &c. on, &c. next after, &c. and that he fail not at his peril, the same day is given by the said court here to the said D. there, &c.

(a) This is informal, according to 2. Lutw. 1514. the record being in the same court, should, I think, be as follows, viz: And because the said court here will advise upon the inspection and examination of the said record, if any such

there be, what judgment to give in the premises, a day, that is to say, next after, is given to the said parties before our lord the king at Westminster to have such judgment. See p. 470. *infra*.

Plea to debt on bail bond, that the assignment of the bond to the plaintiff was not stamped according to the statute.

And the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says that the said plaintiff ought not to have or maintain his afore said action thereof against him; because he says that the said assignment of the said writing-obligatory in the said declaration mentioned was not at any time before the exhibiting the bill of the said plaintiff stamped, according to the form of the statute in such case made and provided, as it ought to have been before any suit ought to be commenced thereon; and this, &c.; wherefore, &c. if, &c.

Declaration by assignee of the late sheriff of Oxford on a bail bond, against one of the sureties, given upon the arrest by a special constable.

MIDDLESEX, to wit. William Lambert, assignee of Arthur Annesly, esquire, late sheriff of the county of Oxford, according to the form of the statute in such case made and provided, complains of James Pears, being, &c. of a plea that he render to the said William, as assignee as afore said, the sum of one hundred pounds of good and lawful money of Great Britain, which he owes to and unjustly detains from him; for that whereas one R. G. heretofore, to wit, on, &c. had been arrested and was then in the custody

custody

DEBT on BAIL BOND.—By ASSIGNEES.

custody of the said A. A. then being sheriff of the county of Oxford, under and by virtue of a certain writ of our said lord the king called a *special testatum capias ad respondendum* before then issued out of the court of our lord the king, before the king himself here (the said court then and still being held at Westminster, in the county of Middlesex aforesaid), by and at the suit of the said plaintiff against the said R. G. and directed to the sheriff of the said county of Oxford, by which said writ our said lord the king had commanded the said sheriff that he should take the said R. G. if he should be found in his baliwick, and him safely keep, so that he might have his body before our said lord the king on the morrow of the Purification of the Blessed Virgin Mary, wheresoever our said lord the king should then be in England, to answer to the said plaintiff in a certain plea of trespass on the case upon several promises therein particularly mentioned, to the damage of the said plaintiff of one hundred pounds as it was said, and that the said plaintiff should have there that writ, which said writ had been before then duly indorsed for bail for fifty pounds by virtue of an affidavit of the cause of action before them made, and duly assised of record in the said court of our said lord the king, before the king himself here, according to the form of the statute in such case made and provided: And whereas the said R. G. having been so arrested, and being so in the custody of the said A. A. so being sheriff of the said county under and by virtue of the said writ as aforesaid, he the said A. A. as such sheriff, took bail for the appearance of the said R. G. at the return of the said writ, according to the form of, &c. and upon that occasion the said defendant as one of the said bail afterwards, to wit, on, &c. by his certain writing-obligatory, commonly called a bail bond, sealed with the seal of the said defendant, and now shewn to the court of our said lord the king, before the king himself now here, the date whereof is the day and year last aforesaid, acknowledged himself to be and became held and firmly bound to the said A. A. as such sheriff as aforesaid (by the name and addition of A. A. esquire, sheriff of the county of Oxford), in the sum of one hundred pounds of good and lawful, &c. to be paid to the said A. A. or his certain attorney, executors, administrators, or assigns, when he the said defendant should be thereto afterwards requested, under and subject to a certain condition to the said writing-obligatory subscribed, that if the said R. G. did appear before our sovereign lord the king, wheresoever he should be, on the morrow of the Purification of the Blessed Virgin Mary, to answer to the said plaintiff in a plea of trespass on the case, to the damage of the said plaintiff of one hundred pounds, then the said obligation was to be void and of no effect, otherwise to stand and remain in full force, vigour, and effect, as in and by the said writing-obligatory and the condition thereof, relation being thereunto had, will more fully appear: And the said plaintiff in fact saith, that the said R. G. did not appear before our sovereign lord the king on the morrow of, &c. in the condition of the said writing-obligatory mentioned, according

2. Raym. 1459.

to the exigency of the said condition, and of the said writ, whereby the said writing-obligatory became forfeited to the said sheriff: And the plaintiff further saith, that the said writing-obligatory being so forfeited, and the money therein specified being wholly unpaid to the said sheriff, he the said sheriff afterwards, to wit, on, &c. at, &c. by a certain indorsement on the said writing-obligatory then and there duly made and attested, assigned the said writing-obligatory to the said plaintiff, according to the form of, &c. as by the said assignment, which hath been duly stamped before the commencement of this suit, and is now shewn to the court of our said lord the king, before the king himself, the date whereof is the day and year last aforesaid, more fully appears; by means whereof, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff, as assignee of the said sheriff, to demand and have of and from the said defendant the said sum of one hundred pounds above demanded: Yet the said defendant, although often requested, &c. hath not as yet paid the said sum of one hundred pounds above demanded, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, he the said defendant hath hitherto wholly refused and still refuses so to do, to the damage of the said plaintiff of ten pounds; and therefore he brings his suit, &c.

Declaration by an administratrix and assignee of a sheriff on a bail bond, against defendant, who had been arrested at the suit of plaintiff, as administratrix, and was in the custody of the sheriff, who took a bond for his appearance in the court of K. B. but he did not appear, &c.

LONDON, to wit. Susannah Cock, administratrix of all and singular the goods, chattels, and credits, which were of Benjamin Cock deceased at the time of his death, who died intestate, and assignee of B. W. esquire, and J. S. esquire, sheriffs of the city of London, according to the form of the statute in such case made and provided, complains of Richard Roberts, being, &c. of a plea that he render to the said Susannah, as administratrix and assignee as aforesaid, the sum of one hundred and sixty-nine pounds of good and lawful money, which he unjustly detains from her; for that whereas the said Richard heretofore, to wit, on, &c. to wit, at, &c. had been arrested, and was then in the custody of the said B. W. and J. S. (they the said B. W. and J. S. then and at the several times hereinafter mentioned, being sheriffs of the city of London, under and by virtue of a certain writ of our said lord the king called a *capias ad respondendum*, before then issued out of the court of our said lord the king, before the king himself here, the said court then and still being holden at Westminster, in the county of Middlesex) by and at the suit of the said Susannah, as administratrix as aforesaid, against the said Richard, directed to the sheriffs of the said city of London, by which said writ our said lord the king had commanded the said sheriffs, that they should take the said Richard if he should be found in their bailiwick, and him safely keep, so that they might have his body before our said lord the king on the morrow of St. Martin, wheresoever our said lord the king should then be in England, to answer to the said Susannah, as administratrix as aforesaid, in a plea of trespass on the case upon

BY ADMINISTRATOR AND ASSIGNEE.

upon promises, to the damage of the said Susannah, as administratrix as aforesaid, of one hundred pounds, as it was said; and that the said sheriffs should have there that writ, which said writ had before then been duly indorsed for bail for eighty-four pounds ten shillings, by virtue of an affidavit of the cause of action before then made and duly assised of record in the said court of our said lord the king, before the king himself, according to the form of the statute in such case made and provided, and which said writ so indorsed for bail had been afterwards, and before the said return thereof, delivered to the said B. W. and J. S. so being sheriffs of the said city of L. as aforesaid, in due form of law to be executed: And whereas the said Richard, having been so arrested and being in such custody as aforesaid, the said B. W. and J. S. so being sheriffs of the said city of London as aforesaid, took bail for the appearance of the said Richard at the return of the said writ, according to the form of the statute in such case made and provided; and upon that occasion the said Richard then and there, to wit, on, &c. by his certain writing-obligatory, commonly called a bail bond, sealed with the seal of the said Richard, and now shewn to the court of our said lord the king, before the king himself here, the date whereof is the day and year aforesaid, acknowledged himself to be, and then and there became held and firmly bound to the said B. W. and J. S. as such sheriffs as aforesaid (by their names and additions of B. W. esquire, and J. S. esquire, sheriffs of the city of London), in the penal sum of one hundred and sixty-nine pounds of good and lawful money of Great Britain, to be paid to the said sheriffs or either of them, their certain attorney, executors, administrators, and assigns, when he the said Richard should be thereto afterwards requested, subject nevertheless to a certain condition to the said writing obligatory subscribed, that if the said Richard did appear before his majesty on the morrow of St. Martin, wheresoever his majesty should then be in England, to answer to the said Susannah, as administratrix as aforesaid, of a plea of trespass on the case upon promises to the damage of the said Susannah, as administratrix as aforesaid, of two hundred pounds as it was said, then the said obligation was to be void and of no force, otherwise to stand and remain in full force, vigour, and effect, as in and by the said writing-obligatory and the condition thereof, relation being thereunto had, will more fully appear: And the said Susannah, as administratrix as aforesaid, in fact saith, that the said Richard did not appear before his majesty on the morrow of St. Martin, in the condition of the said writing-obligatory mentioned, to answer to the said Susannah, as administratrix as aforesaid, in the plea aforesaid, according to the exigency of the said condition, whereby the said writing-obligatory became forfeited to the said B. W. and J. S. as such sheriffs as aforesaid: And the said Susannah, administratrix as aforesaid, in fact further saith, that the said writing-obligatory being so forfeited, and the money therein specified being wholly unpaid to the said B. W. and J. S. as such sheriffs of the said city of L. as aforesaid, afterwards, to wit, on, &c. at, &c.

DEBT ON BAIL BOND.

by a certain indorsement in the said writing-obligatory then and there duly made and attested, assigned to her the said writing-obligatory, according to the form of the statute in such case made and provided, as by the said assignment, duly stamped before the commencement of this suit, and now shewn to the court of our said lord the king, before the king himself, the date whereof is the day and year aforesaid, more fully appears; by means whereof, and by force of the statute in such case made and provided, an action hath accrued to the said Susannah (to which said Susannah, after the death of the said B. C. deceased, to wit, on, &c. at, &c. administration of all and singular the goods, chattels, and credits which were of the said B. C. deceased, at the time of his death, who died intestate, by John, by Divine Providence, archbishop of C. primate of all England and metropolitan, in due form of law was granted), as assignee of the said B. W. and J. S. so being sheriffs of the said city of London as aforesaid, to demand and have of and from the said Richard the said sum of one hundred and sixty-nine pounds above demanded: Yet the said Richard, although often requested, hath not, &c. to the said Susannah, as administratrix as aforesaid, but to pay, &c. hath hitherto, &c. to the damage of, &c. of twenty pounds, and therefore, &c.; and she brings here into court the letters of administration of the said archbishop of C. which fully prove to the court here the granting thereof to the said Susannah in form aforesaid, the date whereof is the day and year in that behalf above mentioned, &c.

Drawn by MR. TIDD.

DECLARATION at YORKSHIRE, to wit. O. R. late of, &c. in the county of Lancashire, yeoman, was summoned to answer J. F. esquire, F. F. esquire, and T. W. gentleman, assignees of J. C. esquire. late sheriff of the county palatine of Lancashire, according to the form of the statute in such case made and provided, in a plea that he render unto the said plaintiffs one hundred pounds of law-ful, &c. which he owes to and unjustly detains from them, &c.; and thereupon the said plaintiffs, by A. B. their attorney, say, that whereas the said plaintiffs, after the first day of Trinity term, which was in the year of Our Lord 1760, that is to say, on the sixth day of November, in the twentieth year of the reign of our lord the now king, sued and prosecuted out of his majesty's court of the common bench at Westminster, against one R. H. a certain writ of our lord the now king called a *testatum capias ad respondendum*, directed to his majesty's chancellor of his county palatine of Lancashire or his deputy there, that by his majesty's writ, under the seal of his said county palatine of L. duly to be made out and directed to the then sheriff of the said county palatine, he the said chancellor or his deputy there should command the then said sheriff that he the said sheriff should take the said R. H. called in the said writ R. H. late of, &c. if he might be found in the said county palatine, and him safely keep, so that he the said sheriff

BY THE ASSIGNEE.

sheriff might have his body before his said majesty's justices at Westminster, from the day of St. Martin in fifteen days then next following, to answer the said plaintiffs of a plea of trespass on the case upon promises, to the damage of the said plaintiffs of one hundred pounds; and that the said chancellor or his deputy should then have there that writ, which said writ, before the delivery thereof to the said chancellor for execution as hereinafter is mentioned, was duly marked or indorsed for bail for fifty pounds, by virtue of an affidavit duly made and filed in his majesty's court of the bench aforesaid, of the cause of action of the said plaintiffs against the said R. H. in that behalf, according to the form of the statute in such case made and provided, which said writ was afterwards, and before the return thereof, to wit, on, &c. in the twentieth year aforesaid, by the said plaintiff's delivered to T. earl of Clarendon, who then was and still is chancellor of the said county palatine, to be executed according to the tenor and exigence of that writ, and thereupon the said T. earl of Clarendon, then and still being chancellor of the said county palatine as aforesaid, afterwards, and before the return of the said writ, to wit, on, &c. in the twentieth year aforesaid, within the county palatine aforesaid, by his majesty's writ duly made out, under the seal of the said county palatine, directed to the then sheriff of the said county palatine, commanded the said sheriff to take the said R. H. if he might be found in the said county palatine, and him safely keep, so that he the said sheriff might have his body before his majesty's justices at Westminster aforesaid, from the day of St. Martin in fifteen days aforesaid, to answer to the said plaintiffs in the said plea of trespass on the case upon promises, to the damage of the said plaintiffs of one hundred pounds; which said writ, so directed to the said sheriffs as aforesaid, afterwards, and before the delivery thereof to the said sheriff for execution as hereafter is mentioned, was duly marked or indorsed for bail for fifty pounds, according to the form of the statute in such case made and provided; and which said writ, so directed to the said sheriff as aforesaid, was afterwards and before the return thereof, to wit, on, &c. in the year aforesaid, within the county palatine aforesaid, delivered to the said J. C. who then and from thence until and at and after the return of the said writ was sheriff of the said county palatine of Lancaster, to be executed in due form of law; by virtue of which said writ, directed to the said sheriff as aforesaid, he the said J. C. so being sheriff of the said county palatine as aforesaid, afterwards, and before the return of the said writ, to wit, on, &c. in the twentieth year aforesaid, within the county palatine aforesaid, to wit, at, &c. and within the bailiwick of the said sheriff, took and arrested the said R. H. by his body, and had and detained him in his custody by virtue of the said writ and arrest: And whereas the said J. C. so being sheriff of the said county palatine as aforesaid, upon that arrest took bail for the appearance of the said R. H. at the return of the said writ, according to the exigence of the said writ; and upon that occasion the said O. B. as bail or surety for the said R. H. afterwards, and before the re-

turn of the said writ, to wit, on, &c. in the twentieth year aforesaid, at the castle of York, in the said county of York, by his certain writing, commonly called a bail bond, sealed with his seal, acknowledged himself to be, and became held and firmly bound to the said J. C. then being sheriff of the county palatine aforesaid, (by the name and description of J. C. esquire, high sheriff for the county of L.) in the sum of one hundred pounds of lawful, &c. to be paid to the said sheriff or his assigns, when he the said O. B. should be thereto afterwards requested, with a condition to the said writing-obligatory subscribed, that if the said R. H. did appear before his said majesty's justices at Westminster, from the day of St. Martin in fifteen days aforesaid, to answer the said plaintiffs in the said plea of trespass, and also that the said R. H. might answer the said plaintiffs according to the custom of his majesty's court of common bench aforesaid, in the said plea of trespass upon the promises, to the damage of the said plaintiffs of one hundred pounds, then the said obligation to be void and of no force, otherwise to stand and remain in full force, vigour, and effect, as by the said writing-obligatory and the said condition thereof, relation being thereto respectively had, may more fully appear: And whereas the said J. C. so being late sheriff of the said county palatine of L. aforesaid, afterwards, to wit, on, &c. in the twentieth year aforesaid, at, &c. at the requests, costs, and charges of the said J. F. F. F. and T. W. the plaintiffs in the said suit, assigned the said writing-obligatory to them the said plaintiffs, then and there indorsing the said assignment on the back of the said writing-obligatory, and attesting the same under his hand and seal of his late office of sheriff of the county palatine of L. aforesaid, in the presence of two credible witnesses, according to the form of the statute in such case made and provided, as by the said assignment so indorsed on the said writing-obligatory as aforesaid, and duly stamped before the suing forth the original writ of the said plaintiffs, according to the form of, &c.: And the said plaintiffs in fact say, that the said R. H. did not appear before his majesty's said justices at Westminster aforesaid, from the day of St. Martin in fifteen days aforesaid mentioned in the said condition, according to the tenor and effect of the said condition, whereby the said writing-obligatory became forfeited, and whereby and by force of the statute in such case made and provided an action hath accrued to the said plaintiffs to demand and have of the said O. B. the said sum of one hundred pounds above demanded; yet the said O. B. although often requested, hath not yet paid the said one hundred pounds, or any part thereof, to the said J. C. late sheriff of the said county palatine, before the said assignment, or to the said plaintiffs, assignees as aforesaid, or any of them, since the said assignment, but he the said O. B. to pay the same to them or any of them hath hitherto wholly refused, and to pay the same to the said plaintiffs still refuses, to the said plaintiffs their damage of ten pounds, and therefore the said plaintiffs bring their suit, &c.; and they bring into court the said writing-obligatory with the said assignment thereof so thereon indorsed

BY ASSIGNEE OF SHERIFF.

dorfed, which fufficiently prove to the court here the faid debt and assignment thereof in form aforefaid, the refpective dates of which faid writing-obligatory and assignment are the fame day and year in that behalf refpectively above-mentioned, &c.

LEICESTERSHIRE, to wit. Henry Cropper, affignee of Declaration, the fuit of W. William Vann, efquire, fheriff of the county of L. according to the fignee of a fheriff on a bail bond, againft one of the bail, the bond having been forfeited by the original defendant in appearing at the return of the writ.

form of the ftatute in fuch cafe made and provided, complaints of T. C. J. C. J. L. P. being, &c. of a plea that they render to the faid Henry, as affignee as aforefaid, the fum of fifty pounds of good and lawful money of Great Britain, which they owe to and unjuftly detain from him; for that whereas the faid T. C. heretofore, to wit, on, &c. A. D. 1785, to wit, at A. in the county of L. had been arrefted, and was then and there in cuftody of the faid W. V. efquire (he the faid W. V. then and at the feveral and refpective times hereinafter mentioned being fheriff of the county of L.), under and by virtue of a certain writ of attachment before then iffuing out of his majefty's high court of chancery, at Weftminfter, in the county of Middlefex, by and at the fuit of the faid Henry againft the faid T. C. directed to the fheriff of the faid county of L. by which faid writ our faid lord the king had commanded the faid fheriff that he fhould take the faid T. C. if he fhould be found in his bailiwick, and him fafely keep, fo that he might have his body before our faid lord the king, in his court of chancery, on the morrow of All Souls, to answer our faid lord the king as well touching a contempt which he as it was alleged had committed againft our faid lord the king, as alfo fuch other matters as fhould be then and there laid to his charge, and further to perform and abide fuch order as the faid court fhould make in that behalf for not appearing at the fuit of the faid Henry, and that the faid fheriff fhould have there then that writ, which faid writ had been and was before then delivered to the faid W. V. efquire, fo being fuch fheriff of the faid county of L. as aforefaid, in due form of law to be executed: And whereas the faid T. C. having been fo arrefted, and being in fuch cuftody as aforefaid, he the faid W. V. efquire, fo being fuch fheriff of the faid county of L. as aforefaid, took bail for the appearance of the faid T. at the return of the faid writ, according to the form of the ftatute in fuch cafe made and provided; and upon that occafion the faid T. C. and the faid J. C. and J. L. as his bail, then and there, to wit, on, &c. at, &c. by their certain writing obligatory, commonly called a bail bond, fealed with the feals of the faid T. C. J. C. and J. L. and now fhewn to the court of our faid lord the king, before the king himfelf here, the date whereof is the day and year laft aforefaid, acknowledged themfelves to be and then and there became held and firmly bound to the faid W. V. efquire, as fuch fheriff as aforefaid (by his name and addition of W. V. efquire, fheriff of the county aforefaid), in the fum of fifty pounds of good and lawful money of Great Britain, to be paid to the faid fheriff, or his cer-
tain

DEBT.—PLEA COMPERUIT, &c.—REPLICATION.

tain attorney, executors, administrators, and assigns, when they the said T. C. J. C. and J. L. should be thereto afterwards requested, subject nevertheless to a certain condition to the said writing-obligatory subscribed, that if the said T. C. should appear before our lord the king, at Westminster, in his court of chancery, on the morrow of All Souls then next ensuing, to answer our said lord the king as well touching a certain contempt which he as it was alledged had committed against our said lord the king, as also such other matters as should be then and there laid to his charge, and further to perform and abide such order as the said court should make in that behalf for not appearing at the suit of the said Henry, then the said obligation was to be void and of no force, otherwise to stand and remain in full force, vigour, and effect, as in and by the said writing-obligatory, and the condition thereof, relation being thereunto had, will more fully appear: And the said Henry in fact saith, that the said T. C. did not appear before our said lord the king, in his court of chancery, on the morrow of All Souls, in the condition of the said writing-obligatory mentioned, according to the exigency of the said writ, whereby the said writing-obligatory became forfeited to the said W. V. so being sheriff of the said county of L. as aforesaid; and the said writing-obligatory being so forfeited, and the money therein specified being wholly unpaid to the said W. V. esquire, he the said W. V. esquire, as such sheriff as aforesaid, afterwards, to wit, on, &c. at, &c. by a certain indorsement on the said writing-obligatory then and there duly made and attested, assigned the same unto the said Henry, pursuant to the act of parliament in that case made and provided, as by the said assignment duly stamped before the commencement of this suit, and now shewn to the court of our said lord the king, before the king himself, the date whereof is the day and year last aforesaid, more fully appears; by means whereof, &c. &c. (conclude as in the preceding precedents.)

of comperuit
and diem to an
on a bail

<p>BASKERVILLE against CASSE, ASSIGNEE.</p>	}	<p>AND the said J. B. by W. P. his attorney, comes and defends the wrong and injury, when, &c. and says, that said plaintiff, <i>ad id non</i>; because that said W. B. the principal did appear before our said lord the king, at Westminster, on Monday next after eight days of St. Hilary, mentioned in the said condition, according to the form and effect of the said condition, as by the record of the said appearance remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears; and this he is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him, &c.</p>
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Replication to
the said plea

And the said plaintiff saith, that he, by any thing by said defendant above in pleading alledged, ought not to be barred from having

REPLICATION, NUL TIEL RECORD—PLEA.

having his aforesaid action thereof maintained against him said defendant, because he saith, that there is not any such record of appearance of said W. B. remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, as said defendant hath above in his said plea in that behalf alledged; and this he is ready to verify, when, where, and in what manner the court here shall order, and thereupon the said defendant is commanded by the court here that he produce the said record before our said lord the now king, at Westminster, on next after, and that he fail not at his peril, the same day is given to said plaintiff here, &c.

The record in this case being in the same court. *Qy.* If this is a proper conclusion to the replication? See the autho-

rities in p. 470. *ante* and see also a better form in the next precedent.

SMITH, ASSIGNEE, }
against

FITZGERALD.

AND the said plaintiff, as to the said plea of the said defendant by her above pleaded in bar, says, that he the said plaintiff, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining his aforesaid action against her the said defendant, because he says, that there is not any such record of the said appearance of the said H. F. (the principal) in that plea mentioned remaining in the court of our said lord the king of the bench here, to wit, at Westminster aforesaid, as the said defendant hath in and by her said plea above alledged; and this he the said plaintiff prays may be enquired of as the said court here shall award: And thereupon because the justices will inspect and examine the records of the said court here to see whether there be such a record of the said appearance of said H. J. as in said plea of said defendant is mentioned, before they give judgment upon the premises, a day is therefore given to said parties herefrom to hear judgment thereof, for that said justices here are not yet advised thereof, &c.

A replication nul tiel record assignee of principal, where record is alledged to be in same court, and the record of defendant in the common plea.

V. LAWES.

Trinity Term, 11. & 12. Geo. II.

GOLLOP }
against

BOWER.

AND said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said writing, and it is read to him; he also prays oyer of the said condition of the said writing, and it is read to him in these words, to wit, "the condition of this obligation is such, that if the above bounden William G. do appear before our sovereign lord the king, in his court of chancery, in fifteen days after Easter next ensuing, wherefoever the said court shall then be, to answer to our said lord the king, as well touching a contempt which he as it is alledged hath committed towards our said lord the king, as also such other matters as shall be then laid to his charge, and further to perform and abide

Stat. 23. H. 6. c. 9. pleaded an action on bond, and that it was given for safe and favour.

DEBT ON BAIL BOND—PLEA.

abide by such order as the said court shall then make in this behalf, then this obligation to be void and of none effect, or else to be and remain in full force and virtue," which being read and heard the said defendant says, that he ought not to be charged with the said debt by virtue of the said writing, because he says, that before the making said writing, to wit, by an act made at the parliament of our late sovereign lord Henry the Sixth, late king of England, and held at Westminster, in the county of Middlesex, on the twenty-fifth day of February, in the twenty-third year of his reign, reciting that the king, considering the great perjury, extortion, and oppression which was and had been in this realm, by his sheriffs, under sheriffs, and their clerks, coroners, stewards of franchises, bailiffs, and keepers of prisons, and other officers in divers counties of this realm, it was, amongst other things, enacted, that by the authority of the same parliament in eschewing of all such extortion, perjury, and oppression, that no sheriff should let to farm in any manner his county, nor any of his bailiwicks, hundreds, nor wapentakes, nor that the said sheriffs under sheriffs, bailiffs of franchises, nor any other bailiff should return upon any writ or precept to them directed to be returned any inquests in any pannel thereupon to be made, any bailiff's officers or servants to any of the officers aforesaid, in any pannel by them so to be made, nor that any of the said officers or ministers by occasion, or under clerk of their office should take any other thing by them, nor any other person to their use, profit, or avail of any person by them, or any of them to be arrested or attached, nor of none other of them for the omitting of any arrest or attachment to be made by their body, or of any person by them, or any of them by force or colour of their office arrested or attached for fine, fee, suit of person, mainprize, letting to bail, or showing any ease or favour to any such person so arrested, to be arrested for their reward or profit but such as follow, that is to say, for the sheriff twenty-pence, the bailiff which maketh the arrest or attachment fourpence, and the gaoler of the prison, if he be committed to his ward, fourpence; and that the sheriff, under sheriff, sheriff's clerk, steward, or bailiff of franchise, servant, or bailiff, or coroner should not take any thing by virtue of his office by him, nor by any other person to his use, of any person for the making any return or pannel, or the copy of any pannel, but fourpence; and that the said sheriffs, and all other officers and ministers aforesaid, should let out of prison all manner of persons by them arrested, or being in their custody by force of any writ, bill, or warrant, action personal, or by cause of indictment by (a) trespass upon reasonable sureties of sufficient persons having sufficient within the counties where such persons shall be so let to bail or mainprize, to keep their duties in such place as the said writs, bills, or warrants

(a) The word "by" as it originally stood, is a mis recital of the statute, it saying "if;" and this objection was taken by Mr. Morgan to the plea in the case of *Boyer v. Bower*, Hilary 19. Geo. 3.

when lord Mansfield said, that if defendant will undertake to recite a public act, he should be obliged to do so *verbatim et literatim*.

should

PLEA TO DEBT ON BAIL BOND.—EASE AND FAVOUR.

should require, such persons as were or should be in their ward by condemnation, execution, *capias utlagatum*, or excommunication, sureties of peace, and all such persons as were or should be committed to award by special commandment of any justices, and vagabonds refusing to serve according to the form of the statute, of labourers only excepted, and that no sheriff, nor any of the officers or ministers aforesaid, should take, or cause to be taken, or make any obligation for any cause aforesaid, or by colour of their office, but only to themselves of any person which should be in their ward by the course of the law, but by the name of their office, and upon condition within, that the said prisoners should appear at the due time contained in said writ, bill, or warrant, and in such places as said writs, bills, or warrants should require; and if any of the said sheriffs, or other officers or ministers as aforesaid, should take any obligations in their form by colour of their office, that it should be void, as in the said act, amongst other things, more fully appears: And the said defendant further saith, that after the making of the said act, and before the making of the said writing, to wit, on the twenty-fifth day of February, in the eleventh year of the reign of his present majesty, there issued out of his present majesty's court of chancery, the said court being then at Westminster, in the county of Middlesex, against the said defendant a certain writ of his present majesty, directed to the then sheriff of the county of Dorset, to attach the said defendant, so as to have him before his said present majesty, in his said present majesty's court of chancery, on fifteen days after Easter then next ensuing, wheresoever the said court should then be, there to answer to his present majesty as well touching a contempt which he as it is alledged had committed against his present majesty, as also all other matters as should be then and there laid to his charge, and further to abide and perform such orders as the said court of his said present majesty should make in that behalf; whereof the said then sheriff of the said county of Dorset should not fail, and he should bring that writ with him, which said writ afterwards, and before the return thereof, to wit, on the sixteenth day of March, in the said eleventh year of his said present majesty's reign, at D. aforesaid, was delivered to the said Henry Bower, then and until the return of the said writ, sheriff of the said county of D. to be executed in due form of law, by virtue of which said writ the said H. B. afterwards, and before the return of the said writ, and also before the making of the said writing-obligatory, to wit, the same day and year last aforesaid, at D. aforesaid, took and attached said defendant by his body, and kept and detained him in his custody until said defendant afterwards, to wit, on same day and year last aforesaid, at, &c. aforesaid, became bound to the said H. B. in the said writing, in the said sum of forty pounds, under the condition aforesaid, for his shewing ease and favour to the said defendant, and for his deliverance from the said imprisonment; which said writing the said H. B. by colour of his office took and extorted from the said defendant, contrary to the form of that statute; and therefore the

DEBT ON BAIL BOND.—REPLICATION.

said defendant says, that the said writing so taken for the cause aforesaid, by virtue of the aforesaid statute, is null and void; and this he is ready to verify; wherefore he prays judgment if he ought to be charged with the said debt by virtue of the said writ, &c.

EDWARD BOOTH.

This plea is certainly bad, according to the case of *Collins v. Blacktern*, 2. Will. 352, and *Boyce v. Mower*, Hil. 19. G. 3. and it shews the bond to be good at the time of giving it, and the defendant shall

not be permitted to aver any thing that is inconsistent with the nature of the deed; if it had been conditioned for the payment of money, it would most assuredly have been for ease and favour.

Replication, that defendant as sheriff arrested defendant by process for contempt of the court of chancery, and he tendered a bail bond, which plaintiff was bound by the rules of the court to accept, and traverses the case and favour.

BOWER, SHERIFF, } to wit. That he as sheriff did, by virtue of the writ of attachment out of the court of chancery, arrest defendant for a contempt, for not appearing to the bill brought in that court, and that he defendant being under such arrest, tendering to the sheriff a bond, with sufficient sureties for his appearing at the day of the return of such writ, which bond the said sheriff by the rules and practice of the said court of chancery was obliged to accept thereon and discharge the said defendant from such arrest, the said sheriff did accordingly accept of such bond as by the rules and practice of the said court he was obliged to do, without that that such bond was given for shewing any ease and favour to said defendant for his deliverance from said imprisonment, or in other manner than is before set forth.

If the said defendant demur to this replication, the court of chancery will, on motion, stop the defendant by an injunction from proceeding on his demurrer, and will order that the complainant in chancery may be at liberty to proceed to a sequestration, if the defendant does not

appear and put in his answer, and pay the plaintiff his costs at law.

A traverse of this nature, as denying the whole substance of defendant's plea, would be bad on special demurrer, and so determined in the case of *Boyce v. Mower*, Hil. 19. Geo. 3.

Hilary Term, 23. Geo. III.

Another replication to a plea, that bail bond was given for ease and favour, that it was for defendant's appearance at the return of the writ, and not for ease and favour.

BROOKS, ASSIGNEE, } AND said plaintiff, as to said plea of *against* } said defendant by him above pleaded in *SAVAGE.* } bar, says, that notwithstanding any thing by the said defendant in that plea alledged, he the said plaintiff ought not to be charged with the debt aforesaid, because protesting that the said plea, and the matters therein contained in manner and form as the same are above pleaded and set forth, are insufficient in law for replication in this behalf; the said plaintiff says, that the said writing-obligatory in said declaration mentioned was given for the appearance of him the said defendant before his majesty's justices at Westminster, at the day mentioned in the said writ of *capias ad respondendum* in the said declaration mentioned, as in the said declaration is alledged, and not for ease, favour, and deliverance in manner and form as the said defendant hath above pleading alledged, for any or either of them; and this he the said

DEBT ON BAIL BOND.—PLEAS.

said plaintiff prays may be enquired of by the country, and the said defendant doth the like, &c. therefore, &c.

V. LAWES.

MIDDLESEX, to wit. Sir Samuel Fledger, knight, late Samuel Fledger, esquire, and sir John Forriano, knight, late John Forriano, esquire, and late sheriff of the county of Middlesex, complain of Thomas Faulker being in the custody, &c. in a plea that he render unto them eighty pounds of lawful, &c. which he owes to and unjustly detains from them; for that whereas the said defendant on the fourth day of July, A.D. 1755, at Westminster, in the county aforesaid, by his certain writing-obligatory, sealed with his seal, and now shewn to his majesty's court here, the date whereof is the same day and year aforesaid, did acknowledge himself to be held and firmly bound to said sir S. and said sir J. then being S. F. esquire, and J. F. esquire, and then being sheriffs of the said county of Middlesex, by the name of S. F. esquire, and J. F. esquire, sheriffs of the county of Middlesex, in the said sum of eighty pounds, to be paid to the said then sheriffs when he should be thereunto afterwards requested, and afterwards, to wit, on, &c. at, &c. aforesaid, said plaintiffs were severally knighted; yet the said defendant, although often requested, &c. common conclusion, &c. pledges to prosecute, &c.

Declaration
debt on a bail
bond at
suit of the
who had been
knighted after
making the
bond.

LORIG } AND the said defendant, by R. G. his attorney, comes and defends the wrong and injury, when, &c. and says, that said plaintiff *actio non*; because he says, that he the said defendant at the time of the making and executing of the said writing-obligatory, in the said declaration mentioned, was an infant, within the age of twenty years, to wit, of the age of ~~years~~ and no more, to wit, at Westminster aforesaid; and this he the said defendant is ready to verify; wherefore he prays judgment, &c.

Plea of *infra*
statutum to a bail
or other bond.

Hilary Term, 32. Geo. II.

BASKERVILLE } AND said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says *actio non*; because he saith, that said W. B. did appear before our said lord the king, at Westminster, on Monday next after eight days of St. Hilary, mentioned in the said condition, according to the form and effect of the said condition, as by the record of the said appearance remaining in the court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears; and this he is ready to verify by the said record; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him, &c.

Plea of *compromissum*
ad damnum to a
bail bond.

Replication to *CASSE, ASSIGNEE,*
the last plea, *not*
the record.

again!
BANKERVILLE.

And said plaintiff saith, that he, by any thing by said defendant above in pleading alleged, ought not to be barred from having and maintaining his aforesaid action against said defendant; because he saith, that there is not any such record of appearance of said W. B. remaining in said court of our said lord the king, before the king himself, at Westminster aforesaid, as said defendant hath above in his said plea in that behalf alleged, and thus he is ready to verify where and in what manner the court here shall order; and thereupon said defendant is commanded by the court here that he produce the said record before our lord the king at Westminster, on _____, next after _____, and that he fail not at his peril, the same day is given by said court here to said plaintiff there, &c.

(a) Plea of set-off
to an action upon
a bond or inden-
ture.

Stat. 28. Geo. 2.
c. 24.

AND said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and saith that said plaintiff *actio non*; because he saith, that at the time of exhibiting, &c. there was due to the said plaintiff upon and by virtue of said indenture or writing of obligatoriness the sum of _____ pounds and no more, to wit, at, &c. where said _____ the said plaintiff was and still is indebted to the said defendant, &c. for work and labour, and which money so due and owing from said plaintiff to said defendant exceeds the aforesaid money due upon and by virtue of said indenture or writing-obligatory in said declaration mentioned, and out of which said sum he said defendant is ready and willing, and hereby offers to set-off and allow to said plaintiff upon and by virtue of said indenture or writing-obligatory in said declaration mentioned, according to the term of the statute, &c., and thus he the said defendant is ready to verify; wherefore he prays judgment in, &c.

Declaration in
debt at the suit
of the assignee
of the bail bond
against one of
the bail in the
common pleas.

(b).

Richardson's
B.R. 2. vol. 282.

286.

MIDDLESEX, to wit. (c) Thomas Anston, late of Lee Common, in the parish of Wandorser, in the county of Bucks, butcher, was summoned to answer unto Edward Tailindge, assignee of Joseph Bullock, esquire, sheriff of the county of Bucks, in a plea that he render to him said plaintiff thirty-eight pounds of lawful, &c. which he owes to and unjustly detains from him, &c.; and thereupon said plaintiff, by Benjamin Winkley his attorney,

(a) This is not a plea to Debt on Bail Bond, but inserted by mistake. (See Pleas, *post*, and in its proper place. See *Index*.)

(b) An action on a bail bond must be brought in the same court where the bail was given. *R. 1723*, in B. R. and the like point in C. P. 3. Will. 348. 2. Bur. 67. 642. 22. Blackit. R. 838, and the reason is, because the act directing the assignment of the bond, gave the court, after such

be aware put in fact, an equitable jurisdiction to try proceedings, and to discharge defendant in so far as respects the original action on real debt, which jurisdiction cannot be exercised unless the original action and the action on the bail bond be depending in the same court.

(c) The *venue* in this action must be laid in that county in which the bail was taken, or the assignment made, *Crompt. Prac. 2. Stra. 727.*

complains

DEBT, &c.—By ASSIGNEE.

complains; for that whereas said plaintiff heretofore, to wit, in Michaelmas term (a) in the twenty-second year of the reign of our lord the now king, sued and prosecuted out of the court of our said lord the king of the bench here, against one Morris Savage, a certain writ of our said lord the king called *copias ad respondendum*, directed to the then sheriff of Bucks (b); by which said writ our said lord the king commanded said sheriff of Bucks that he should take said M. S. if he should be found in his bailiwick, and keep him safely, so that he might have his body before the justices of our said lord the king at Westminster, in eight days of St. Hilary, to answer the doct. said plaintiff in a plea, wherefore with force and arms he broke the door of said plaintiff at Westminster, and did other wrongs to him, to the great damage of said plaintiff, and against the peace of our lord the king, and also that the said M. S. might answer to plaintiff according to the custom of said court of our said lord the king of the bench, in a certain plea of trespass upon the case on premises, to the damage of said plaintiff of thirty-eight pounds, and that said sheriff should there have that writ, which said writ afterwards, and before the return thereof to the then sheriff of the aforesaid county of Bucks, to be executed as hereinafter mentioned, was duly indorsed for bail for said plaintiff in pounds eight shillings, by virtue of an affidavit of the cause of action before then made and sworn to the justice of our said lord the king of the bench, according to the form of the statute in such case made and provided; which said writ so indorsed as aforesaid, afterwards, to wit, on the seventh day of December, in the year 1781 aforesaid, was delivered to said J. B. who then and from thenceforth until at and after the return of said writ was sheriff of said county of Bucks, to be executed in due form of law; by virtue of which said writ said J. B. being such sheriff as aforesaid, afterwards, and before the return of said writ, to wit, on the day and year last aforesaid, in said county of Bucks, and within his bailiwick, as such sheriff as aforesaid, did take and arrest said M. S. by his body, and then and there had and detained him in his custody at the suit of said plaintiff for the cause aforesaid; and said M. S. being so arrested and in custody of said J. B. as such sheriff as aforesaid, at the suit of said plaintiff by virtue of said writ, he said J. B. being such sheriff as aforesaid, afterwards, and before the return of said writ, to wit, on the day and year last aforesaid, in said county of Bucks, and within his bailiwick, took bail for the appearance of said M. S. at the return of said writ, according to the tenor of said writ, to wit, said M. S. said defendant and one W. V. and thereupon said defendant, by his certain writing-obligatory, commonly called a bail bond (c), sealed with the seal of said defendant, and bearing

This needs a necessity to be set forth.
Vide 1. Barr.
332.

The arrest is traversable.
1. Stow. 434.
643. Say. 474.

(a) Easter, 10 Geo. 3. Hunt, assignee, v. Kingston, on bail bond, the writ was sued out in the vacation, yet held to be a good writ, Lord Raym. 1557. Burr. 258. ; but it was not alleged to have been sued out of the court then held

at Westminster, for then it should seem to have been taken on a special demurrer.

(c) The writ must be set forth, 4. B. Ab. 19.

(c) In B. R. you make a proferet here of the bail bond.

DEBT ON BAIL BOND,

date the day and year last aforesaid, acknowledged himself to be held and firmly bound to said J. B. by the name and description of J. B. esquire, sheriff of the county of Bucks, in thirty-eight pounds of good and lawful money of Great Britain, to be paid to said sheriff or his certain attorney, executors, administrators, or assigns, subject to and dependent nevertheless upon a certain condition to the said writing-obligatory subscribed, to wit, that if the said M. S. should appear before the justices of our sovereign lord the king at Westminster, in eight days of Saint Hilary, to answer said plaintiff in the aforesaid plea of trespass on the case on promise, to the damage of said plaintiffs of thirty-eight pounds, that then the said obligation should be void and of no force, otherwise that it should stand and remain in full force, vigour, and effect, as in and by the said writing-obligatory, and the aforesaid condition thereunder written, relation being thereto had, may more fully appear (a): And said plaintiff in fact saith, that said M. S. did not appear before said justices of our sovereign lord the king at Westminster in eight days of St. Hilary, in said condition of said writing-obligatory mentioned, according to the exigency of the aforesaid writ of *capias ad respondendum*, whereby said writing-obligatory became forfeited to the said sheriff of the said county of Bucks, to wit, at Westminster, in the said county of Middlesex: And said plaintiff further saith, that said writing-obligatory being so forfeited, and the money therein specified being wholly unpaid and unsatisfied to the aforesaid sheriff, he the aforesaid J. B. so being such sheriff as aforesaid, afterwards, to wit, on the thirty-first day of January, in the year of Our Lord 1782, at Westminster aforesaid, in said county of Middlesex, at the costs of said Edward the plaintiff, in the presence of two credible witnesses, and

Vide Wils. 121. sealed with his seal of his said office of *sheriff of the aforesaid county of Bucks aforesaid*, transferred and set over the said writing-obligatory to said plaintiff, according to the form of the statute in such case made and provided, as by the said assignment bearing date the day and year last aforesaid, and indorsed on said writing-obligatory as aforesaid, and duly stamped before the suing forth of the original writ of said plaintiff against said defendant, according to the form of the statute in such case made and provided (b) more fully appears; by means whereof, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff, as assignee of said J. B. sheriff of said county of Bucks, to demand and have of and from said defendant said thirty-eight pounds above demanded; yet said defendant, although often required, hath not as yet paid said thirty-eight pounds above demanded, or any part thereof, either to said sheriff before the said assignment, or to said plaintiff, assignee as aforesaid, since said as-

(a) The breach of condition should be positively alleged, and that too in the word *hoc* of the condition, and not *secundum formam conditionis*, for that is only matter of conclusion, and not of fact, Gilb. Ca. 77.

(b) In B. R. you generally make a protest of the bail bond with the assignment, but it is not held to be necessary, 1, Wils. 121.

signature,

BY ASSIGNEE OF SHERIFF.

signment, but he so to do hath always wholly refused, and he doth still refuse to pay the same, or any part thereof, to said plaintiff, assignee as aforesaid; wherefore said plaintiff, assignee as aforesaid, saith he is injured, and hath sustained damage to the value of twenty pounds, and therefore he brings his suit, &c.; and he also brings into court here the aforesaid writing-obligatory, with the aforesaid condition thereof thereunder written, and subscribed together with the aforesaid assignment thereof to him said plaintiff, bearing date respectively, and hereinbefore in that respect is mentioned.

V. LAWES.

Monday next, after the morrow of All Souls in Michaelmas Term, in the twenty-ninth year of king George the Third.

MIDDLESEX, to wit. Rowland Minns, assignee of James Ferne, and Matthew Bloxham, esquire, late sheriff of the county of Middlesex aforesaid, according to the form of the statute in that case made and provided, complains of Henry Jordan, otherwise called Henry Jordan of Devonshire-street, taylor, being in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself, of a plea that he render to the said Rowland thirty-eight pounds of lawful money of Great Britain which he owes to and unjustly detains from him; for that whereas after the first day of Trinity term, which was in the year of Our Lord 1706, to wit, on the sixth day of June, in the year of Our Lord 1788, the said Rowland prosecuted out of the court of our said lord the king, before the king himself (the said court then and still being held at Westminster, in the county of Middlesex aforesaid) a certain precept of our said lord the king, commonly called a bill of Middlesex, directed to the sheriff of the said county of Middlesex, by which it was commanded to the said sheriff, that he should take the said Henry if he should be found in his bailiwick, and that he should keep him safely, so that he might have his body before the lord the king at Westminster, on Wednesday next after three weeks of the Holy Trinity, to answer to the said Rowland in a plea of trespass, and also to a bill of the said Rowland against the said Henry for forty pounds upon promises, according to the custom of the said court of our lord the king, before the king himself to be exhibited; which said precept afterwards, and before the return thereof, to wit, on the said sixth day of June, in the year of Our Lord 1788 aforesaid, at Westminster aforesaid, in the county of Middlesex aforesaid, was delivered to the said J. F. esquire and M. B. esquire, then being sheriff of the said county of Middlesex, to be executed in due form of law; by virtue of which said precept, directed to the sheriff of the said county of Middlesex in form aforesaid, the said J. F. esquire and M. B. esquire then being sheriff of the said county of Middlesex as aforesaid, afterwards, to wit, on the seventh day of June, in the year of Our Lord 1788, took and arrested the said Henry at Westminster aforesaid, in the county of Middlesex aforesaid, and then

Declaration of the assignee of the sheriff on a bail bond against the principal of a criminal suit by bill of Middlesex.

DEBT ON BAIL BOND.

and there detained and kept the said Henry in his custody by virtue of the said precept: And whereas the said Henry afterwards, to wit, on the seventh day of June, in the year of Our Lord 1788 afore said, at Westminster afore said, in the county of Middlesex afore said (the said Henry being so taken, arrested, detained, and kept by the said late sheriff of the said county of Middlesex, at Westminster afore said, in the county of Middlesex afore said, and then remaining in the custody of the said sheriff by virtue of the said precept), by his writing-obligatory, sealed with the seal of the said Henry, and to the court of our said lord the king now here shewn, the date whereof is the same day and year last afore said, acknowledged himself to be held and firmly bound unto the said J. F. esquire and M. B. esquire, then being sheriff of the said county of Middlesex as afore said, by the name and addition of J. F. esquire and M. B. esquire, sheriff of the county of Middlesex, in the said thirty-eight pounds to be paid the said sheriff or his certain attorney, executors, administrators, or assigns, for which payment, to be well and faithfully made, he the said Henry did bind himself, and his heirs, executors, and administrators, with a condition to the said writing-obligatory underwritten, that if the said Henry did appear before our lord the king at Westminster, on Wednesday next after three weeks of the Holy Trinity, to answer to the said Rowland in a plea of trespass, and also to a bill of the said Rowland against the said Henry for forty pounds to be exhibited, that then the said writing-obligatory should be void and of no force, otherwise to stand and remain in full force, vigour, and effect: And whereas the said Henry did not appear before our said lord the king at Westminster on the said Wednesday next after three weeks from the Holy Trinity in the said condition mentioned, according to the form and effect of that condition, whereby the said writing-obligatory became forfeited: And whereas also afterwards, to wit, on the seventh day of November, in the year of Our Lord 1788 afore said, at Westminster afore said, in the county of Middlesex afore said, at the request, costs, and charges of the said Rowland, the said J. F. esquire and M. B. esquire, late sheriff of the county of Middlesex afore said, by the name and description of J. F. esquire and M. B. esquire, late sheriff of the county of Middlesex, assigned to the said Rowland the said writing-obligatory so made for the appearance of the said Henry as afore said, by indorsing the assignment of the said late sheriff on the said writing-obligatory, and by them and their attesting, the said assignment under the hand and seal of the office of the said late sheriff, in the presence of two credible witnesses, according to the form of the statute in such case made and provided; which said assignment, the date whereof is the same day and year last year last afore said, is also to the court of our said lord the king now here shewn; by reason of which said premises, and according to the form of the statute in such case made and provided, an action hath accrued to the said Rowland, as assignee of the said J. F. esquire and M. B. esquire, late sheriff of the said county of Middlesex as afore said, to demand and have of and from

Bond assigned
seventh of No-
vember 1788.

PLEA—BANKRUPTCY.

from the said Henry the said thirty-eight pounds; nevertheless the said Henry, although often requested, &c. hath not yet paid the said thirty-eight pounds, or any part thereof, to the said Rowland, or to the said J. F. Esquire and M. B. Esquire, or to any or to either of them, but to pay the same, or any part thereof, to the said Rowland, or to the said J. F. and M. B. Esquires, or to any or either of them, he the said Henry hath hitherto altogether refused, and still doth refuse, to the damage of the said Rowland of ten pounds; and therefore he brings his suit, &c. Pledges, &c.

Michaelmas Term, 29. Geo. III.

JORDAN
at / at of

MINNS, Assignee, &c.

And the said Henry, by William Fisher his attorney, comes and defends the wrong and injury, when, &c. and says, that the said Rowland ought not to have or maintain his aforesaid action against the said Henry; because he says, that after the making of the said writing-obligatory in the said declaration mentioned, and after the day mentioned in the said condition thereof, and before the exhibiting the bill of the said Rowland, to wit, on the first day of August, in the year of Our Lord 1788, at Westminster aforesaid, in the county aforesaid, he the said Henry became a bankrupt within the true intent and meaning of the several statutes made, and then and now in force concerning bankrupts, some or one of them: And the said Henry further says, that the said writing-obligatory became forfeited, and the cause of action aforesaid accrued thereupon before such time as the said Henry became bankrupt as aforesaid, to wit, at Westminster aforesaid, in the county aforesaid; and of this the said Henry puts himself upon the country, &c.: And for further plea in this behalf, he the said Henry, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said Rowland ought not to have or maintain his aforesaid action thereof against him; because he says, that after the making of the said writing obligatory in the said declaration mentioned, and after the day mentioned in the said condition thereof, and before the exhibiting the bill of the said Rowland, to wit, on the first day of August, in the year of Our Lord 1788, at Westminster aforesaid, in the county aforesaid, he the said Henry became a bankrupt within the true intent and meaning of the several statutes made, and then and now in force concerning bankrupts, some or one of them: And the said Henry further says, that the said writing-obligatory became forfeited before such time as the said Henry became bankrupt as aforesaid, to wit, at Westminster aforesaid, in the county aforesaid; and of this he puts himself upon the country, &c.: And for further plea in this behalf, &c. *actio non*; because he says, that he the said Henry did appear before our said lord the king at Westminster, on Wednesday next after three weeks of the Holy Trinity mentioned in the said condition, according to the form and

Plea first, that defendant, after making of the bond, and after same became forfeited, and after cause of action accrued, became bankrupt. This plea is given by statute 5 Geo. 2. c. 30. See Co. Bankrupt Law, c. 355.

ad same as in omission of plea in full. The plea for this was, that bond was not assigned till 7th November, 1788, after defendant became bankrupt and just before he obtained certificate.

3d Plea, complete *actio non*.

DEBT ON BASTARDY BONDS.

effect of the said condition, as by the record of the said appearance remaining in the said court of our said lord the king at Westminster aforesaid more fully appears; and this he is ready to verify by the said record; wherefore he prays judgment if the said Rowland ought to have or maintain his aforesaid action thereof against him, &c.

Plea (to a declaration on a bail bond against the principal) that defendant, after making the bond, and after the same became forfeited, and after cause of action accrued, became a bankrupt. This plea is given by stat. 5. Geo. 2. c. 30. Vide Cook's Bank. Laws, fo. 355.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, *actio non*; because he says, that after the making the said writing-obligatory in the said declaration mentioned, and after the day mentioned in the said condition thereof, and before the exhibiting the bill of the said plaintiff, to wit, on, &c. at, &c. he the said defendant became a bankrupt within the true intent and meaning of the several statutes made and then and now in force concerning bankrupts, some or one of them: And the said defendant further says, that the said writing-obligatory became forfeited, and the cause of action aforesaid accrued thereupon before such time as the said defendant became bankrupt as aforesaid, to wit, at, &c.; and of this he the said defendant puts himself upon the country: And for further plea in this behalf, the said defendant, by leave of, &c. according, &c. says, *actio non*; because he says, that after the making of the said writing-obligatory in the said declaration mentioned, and after the day mentioned in the condition thereof, and before the exhibiting the bill of the said plaintiff, to wit, on, &c. at, &c. he the said defendant became a bankrupt within the true intent and meaning of, &c.: And the said defendant further says, that the said writing-obligatory became forfeited before such time as the said defendant became bankrupt as aforesaid, to wit, at, &c.; and of this the said Henry puts himself upon the country, &c.: And for further plea in this behalf, &c. *actio non*; because he says, that he the said defendant did appear before our said lord the king, on, &c. mentioned in the said consideration, according to the form and effect of the said condition, as by the record of the said appearance remaining in the court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears; and this, &c.; wherefore, &c. if, &c.

DEBT.—ON BASTARDY BONDS (a).

Trinity Term, 29. Geo. III.

Declaration by NORTHUMBERLAND, to wit. Joseph Robson, Michael Reed, Thomas Nicholson, and John Robson complain against one Thomas Simpson being in the custody of the marshal of the marshes of the fens, upon a bond given by him to indemnify the parish against a bastard child likely to become chargeable to the parish.

(a) See Debt on Indemnity Bonds, *post*.

11-11-68

Plea in bar to the action on the above declaration, that the said child, &c., was not damaged, &c., &c., value of the putative child, offered to, and provided for the child, &c., that if the defendants have been since damaged, it was their own wrong.

tioned

DEBT ON BASTARDY BOND.—PLEA,

tioned in the said condition thereof, and also after the said child had attained the age of (a) seven years, and was fit to be put out apprentice, to wit, on the said twenty-fourth day of February, in the year last aforesaid, to wit, at the parish of Cholleiton aforesaid in the said condition mentioned, he the said Henry Melbourn in the said condition mentioned, as the putative father of the said child, was ready and willing, and then and there tendered and offered to the then overseer of the poor of the said parish, and from thenceforth hither to hath been and still is ready and willing to take the said child into his own keeping, and to find and provide for the said child a good and sufficient master, and well and truly put the same child out apprentice to such master, and to provide for and maintain the said child at his own charge and expence from thenceforth for ever hereafter, and from thenceforth for ever hereafter to fully and freely indemnify and save harmless, as well the above named churchwardens and overseers of the poor of the said parish of Cholleiton and their successors for the time being, as also all and singular the other parishioners and inhabitants of the said parish of Cholleiton, then and for the time being, thereafter of and from all manner of costs, taxes, rates, assessments, and charges whatsoever for or by reason of the birth, education, and maintenance of the said child, and of and from all actions, suits, troubles, and other charges and demands whatsoever touching or concerning the same: But the said Thomas Simpson in fact further saith, that at the time when the said Henry Melbourn made the said request and tender as aforesaid, the said child was not delivered to him the said Henry Melbourn, nor was he the said Henry Melbourn then, or any time since, permitted or suffered to have or take the said child, and the said child is still withheld from him the said Henry Melbourn: And the said Thomas Simpson in fact further says, that if the said Joseph, Michael, Thomas N. and John have at any time since the said twenty-fourth day of February aforesaid, in the year last aforesaid, been damnified by reason of the birth, education, and maintenance of the said child, or by reason of any actions, suit, trouble, or other charge or demand whatsoever touching or concerning the same, they have been damnified of their own wrong, and against the wills of the said Henry Melbourn and the said Thomas Simpson, and each of them; and this the said Thomas Simpson is ready to verify; wherefore he prays judgment if the said Joseph Robson, Michael Reed, Thomas Nicholson, and John Robson ought to have or maintain their aforesaid action thereof against him, &c.

(a) Seven years appear to be the age of emancipation, *Comber and Milton*, 2. Dougl. 9. Burne's Just. 13 ed tit Poor, 3. vol. 326 336. *Burrow's Set. Ca.* 3. Salk. 328. *Darlington and Hensington*, 2. *Ld. Raym.* 1473

Plea to discharge
bond given to
the parish of
Cholleiton
against the charge of a bastard child, that A. B. mentioned in the bond was not delivered of any child,
nor was the inhabitants damnified, &c. &c.

PARK
at suit of
COURT, &c.

AFTER craving oyer of the bond and setting out the condition the defendant pleads *actio non*; because protesting that the said Susannah Dodson

mentioned in the bond was not delivered of any child,

NON DAMNIFICATI--REPLICATION--REJOINDER.

in the said condition named, after the making of the said writing-obligatory, was not delivered of any child whereof she was *ensient* on the said, &c. next before the making of the said writing-obligatory; yet for a plea in this behalf the said Thomas says, that the said William and John or their successors for the time being, or the inhabitants of the said township of, &c. at any time from the making of the said writing-obligatory, hitherto have not, nor hath any of them been damnified for or by reason of the birth, maintenance, education, or bringing up of any bastard child whereof the said Susannah was *ensient* as aforesaid, or touching or concerning the same; and this, &c.; wherefore, &c. it, &c.

COURT AND ANOTHER } And the said plaintiffs say *precludi*
against } *non*; because they say, that the said
PARK. } Susannah Dodson in the said condition
mentioned, on the said, &c. next before the making the said writing-obligatory, and also at the time of the making of the said writing-obligatory, was *ensient* of a female child, to wit, at, &c. which said child, after the making the said writing-obligatory, and before the exhibiting, that is to say, on, &c. was born a bastard in the township of, &c. in the said condition mentioned, and that neither the said Thomas nor any other person during a long space of time, after the birth of the said child, and before the exhibiting, &c. that is to say, from the time of the birth of the said child until the day of exhibiting, &c. did provide any maintenance or nourishment for the said child, by reason whereof the inhabitants of the said township, lest the said child should have perished for want of nourishment during that time, were obliged to pay and expend a large sum of money, that is to say, the sum of fifty pounds of lawful, &c. for the maintenance, nourishment, and bringing up of the said child during the said time, that is to say, at, &c.; and to the said William and John say, that the inhabitants of the said township of, &c. are damnified; and this, &c.; wherefore, &c. and their debt, together with their damages, &c.

Replication, that A. B. mentioned in the bond was *ensient* of a bastard child, which before the exhibiting, &c. was born, and that the defendant did not provide for the child, whereby the inhabitants are damnified.

PARK } And the said Thomas protesting
at last of } that the said bastard child did not be-
COURT AND ANOTHER. } come and continue chargeable to the
inhabitants of the said township of, &c. as the said William and John have by their replication above alledged; for a rejoinder nevertheless in this behalf the said Thomas says, that the said child was brought up and maintained by the aforesaid Susannah Dodson, from the time of its birth hitherto, and not by the inhabitants of the said township of, &c. without this, that the inhabitants of the said township of, &c. are damnified in manner and form as the said William and John have by their replication above alledged; and this, &c.; wherefore, &c. if, &c.

Rejoinder, protesting that the child was not chargeable, the rejoinder, defendant says, the child was provided for by the mother.

AFTER

Plea (to debt on bond, the condition of which was that the defendant at the quarter sessions was adjudged to be the father of the child mentioned in the condition, and was ordered to pay the overseers a sum of money for the expenses they had been at since the birth of the child, and also 1s. 6d. a week for so long a time as the child should be chargeable, and to give security for the performance of the order), that he paid the money as ordered, and the 1s. 6d. a week, and that the parish was not damnified, and that he gave security, and afterwards offered and still is ready to take the child and keep it himself, but the overseers refused, &c. &c.

AFTER praying oyer of the bond and setting out the condition the defendant says *affio non*; because he says, that the said order in the said condition mentioned was made at the general quarter sessions of the peace, &c. (the caption of the sessions) by which said order the said court of the said general quarter sessions did adjudge the said defendant the reputed father of the said male bastard child mentioned in the said condition, and did order that the said defendant should pay to the overseers of the said parish of, &c. four pounds seven shillings, money by them disbursed for and towards the charge of keeping the said child since its birth, and the further sum of one pound thirteen shillings towards their charges for attending that sessions; and did further order that the said defendant should pay or cause to be paid to the overseers of the poor of that parish for the time being the sum of one shilling and sixpence by the week weekly, from the date of the said order so long as the said child should continue chargeable to the said parish, and that the said defendant should give security to the overseers of the poor of the said parish of, &c. for the due performance of the said order: And the said defendant further says, that the said A. B. and C. D. at the time of the making of the said order, and from thence until and at the time of the making the said writing-obligatory, and for the space of one month or more next after the making of the said writing-obligatory, were and continued overseers of the poor of the said parish of, &c. and that he the said defendant after the making of the said order, and before the making the said writing-obligatory, to wit, on, &c. paid to the said A. B. and C. D. the then overseers of the poor of the said parish of, &c. the said several sums of four pounds thirteen shillings, and one pound seventeen shillings mentioned in the said order, and the weekly sum of one shilling and sixpence weekly for every week from the time of the making the said order until the time of making the said writing-obligatory, in part performance of the said order; and that the said defendant and the said J. B. as security for him the said defendant in further performance of the said order, did make and seal, and as their joint and several deed deliver the said writing-obligatory with the said condition thereunder written, to wit, on, &c.: And that the said defendant further saith, that the said parish of, &c. at any time after the making the said writing-obligatory until after the day of, &c. was not in anywise damnified touching or concerning the providing for or maintaining of the said male bastard child, or of the premises mentioned in the said order or condition or any part thereof; and that after the making the said writing-obligatory, and during the time that the said A. B. and C. D. were and continued overseers of the poor of the said parish of, &c. and before that the said parish of, &c. was in anywise damnified, &c. [as before] and before the said weekly sum of one shilling and sixpence mentioned in the said order became due and payable, to wit, on, &c. he the said defendant was ready and offered the said A. B. and C. D. the said then overseers of the poor of the parish of, &c. to take and receive the said child into his own keeping, and from that

that time to provide for and maintain the said child at his own charge and expence for the time then to come, and thereby fully and clearly to acquit, discharge, and save harmless the said parish of, &c. of and from all charges and expences touching and concerning the same for the time then to come, and then and there required and requested the said A. B. and C. D. the then overseers of the poor of that parish, to deliver the said child to the said defendant, that the said defendant might from thenceforth maintain and provide for the said child for the time then to come, at his own charge and expence, and thereby indemnify, &c. [as before] and that the said A. B. and C. D. so then being overseers of the poor of the said parish as aforesaid, then and there refused to deliver the said child to the said defendant for the purpose aforesaid: And the said defendant further saith, that he the said defendant always from the time of the making the said writing-obligatory hitherto, at, &c. hath been ready and still is there ready to take the said child into his own keeping, &c. [as before] and that the said parish, or the said overseers of the poor of the said parish, or any other subsequent overseers of the said parish have not, nor hath any of them, at any time since the said request of the said defendant so made for the delivery of the said child to him for the purpose aforesaid, delivered or offered to deliver the said child to the said defendant; and this, &c.; wherefore, &c. if, &c.

And the said plaintiffs say *precludi non*; because they say, that though true it is that the said order in the said plea mentioned and recited is the same order mentioned in the said condition of the said writing-obligatory, and that the said A. B. and C. D. at the time of the making of the said order, and from thence until and at the time of the making of the said writing-obligatory were and continued overseers of the poor of the said parish of, &c. and that the said defendant after the making of the said order, and before the making the said writing-obligatory, did pay to the said A. B. and C. D. the said several sums of four pounds seventeen shillings, and one pound thirteen shillings mentioned in the said order, and the weekly sum of one shilling and sixpence for every week from the time of the making of the said order until the time of the making the said writing-obligatory, in due performance of the said order; and the said defendant and J. B. as security for him the said defendant in further performance of the said order, did make and seal, and as their joint and several deed deliver the said writing-obligatory with the condition thereunder written, as the said defendant hath above in pleading also alledged; nevertheless the said plaintiffs for replication in this behalf say, that the said defendant after the making the said writing-obligatory, and during the time that the said A. B. and C. D. were and continued overseers of the poor of the said parish, did not offer the said A. B. and C. D. to take and receive the said child into his own keeping, and to provide for and maintain the said child at his own charge and expence in manner
and

Replication, confessing the payment of the money, but protesting that he did not offer to take the child.

DEBT ON BASTARDY BOND.—PLEA.

and form as the said defendant hath above in pleading alledged; and this they pray may be enquired of by the country, &c.

Easter Term, 26. Geo. III.

DECLARATION in debt on bond for fifty pounds, given by defendant to the churchwardens and overseers of a parish, to indemnify the parish for the keeping of a bastard child sworn to the defendant.

*Plea thereto;
1st, Non est
factum.*

And the said James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said supposed writing-obligatory, and it is read to him in these words, &c.; he also prays oyer of the condition of the said writing obligatory, and it is read to him in these words, to wit, &c. [here insert the condition, which, reciting that one S. S. had voluntarily sworn she was with child by the defendant, was, that if the defendant should find every thing proper for her lying in, and indemnify the parish, the bond to be void]; which being read and heard, the said James says, that he ought not to be charged with the said debt by reason of the said writing-obligatory; because he says, that the said supposed writing-obligatory is not the deed of him the said James;

*2d Plea, That if
plaintiffs have
been damaged
it was of their
own proper act
and wrong.*

and of this he puts himself upon the country, &c. And for a further plea in this behalf the said James by his attorney, &c. *alio non*; because he says, that if the above named churchwardens and overseers of the poor of the said parish of F. aforesaid, and their respective successors for the time being, and the parishioners and inhabitants of the said parish, or any of them have any time from the making of the said bond hitherto been damaged by reason that the said James did not, after the making of the said bond, find and provide her the said S. S. with all things proper, necessary, fit, and convenient during all the time of her lying in with the said child or children, or if they or any of them from and after the birth of such child or children, have been damaged by reason of the lying in of the said S. S. or by reason or means of any costs, charges, damages, and expenses or demands touching the same, they the said churchwardens and overseers and their successors, and the said inhabitants and parishioners have been so damaged of their own proper and voluntary acts and wrongs, and against the will of the said James; and thus, &c.; wherefore, &c. And for further plea in this behalf, by like leave, &c. says, that he ought not to be charged with the said debt by reason of the said supposed writing-obligatory; because he says, that he the said James on the day of the making of the said writing-obligatory was imprisoned by the said plaintiffs, to wit, at, &c. and then and there kept and detained in prison until he the said J. by means of the force and duress of the said imprisonment there sealed, and as his act and deed delivered the said supposed writing-obligatory, with the condition above set forth, to the said plaintiffs; and thus, &c.; wherefore, &c. if he ought to be charged with the said debt by virtue of the said supposed

*3d Plea, duress
of imprisonment.*

posed writing-obligatory: And for further plea in this behalf he the said James, by like leave, &c. says, that he ought not be charged with the said debt by reason of the said supposed writing-obligatory; because he says, that before the making of the said writing-obligatory, to wit, on, &c. they the said plaintiffs threatened and menaced the said James to imprisonment and cause him to be committed to prison, unless he would seal and execute the said supposed writing-obligatory, with the said condition above set forth, and that he the said James afterwards, to wit, on, &c. through fear of the said menaces and threats, made the said condition, to wit, at, &c.; and thus, &c.; wherefore, &c. if he ought to be charged with the said debt by reason of the said writing-obligatory.

THOMAS WALKER.

And the said plaintiffs, as to the said plea of the said James by him secondly above pleaded in bar, *say precludi non*; because protesting insufficiency for replication, nevertheless in this behalf say, that the said S. S. in the said condition of the said writing-obligatory mentioned, so being with child as in the said condition mentioned, after the making the said writing-obligatory, to wit, on, &c. at, &c. fell sick and disordered, and was taken in labour and delivered of a still born child, with which she had been pregnant as aforesaid, and that the the said S. S. was, and continued, and remained so sick and disordered for a long space of time, to wit, for the space of six weeks and upwards then next ensuing, and until the death of the said S. S. to wit, until and upon the twenty-third of June 1783, and during all the said time the said S. S. laboured and languished under divers sicknesses, maladies, and disorders incident to and in consequence upon her being so delivered of a still born child, to wit, at, &c.: And the said plaintiffs further say, that the said James did not at the time of the said S. S. lying in and delivery as aforesaid, or for or during all or any part of the said time in which she so laboured and languished as aforesaid, find or provide her the said S. S. with all things or with any thing necessary, fit, and convenient during the time of her lying in as aforesaid, according to the form and effect of the condition of the said writing-obligatory, but on the contrary thereof wholly neglected and refused to do so, to wit, at, &c. whereupon they the said plaintiffs, so being such churchwardens and overseers of the poor of the said parish, and other the parishioners and inhabitants of the said parish were forced and obliged to lay out and expend, and did actually lay out and expend a large sum of money, to wit, the sum of ten pounds of lawful, &c. in and about the finding and providing of the said S. S. with all things proper, necessary, fit, and convenient, during the time of her lying in with such child, and in finding and providing her with necessaries, ointments, plaisters, and other necessary things during the time of the lying in of the said S. S. and while she laboured and languished under the said sicknesses, maladies, and disorders aforesaid, and used and applied in and about the endeavouring to heal and cure the said S. S. of the said

Replication to the last plea, that S. S. after making the bond, lay in of a still born child, and that she fell sick and continued so till her death, and that defendant did not find necessaries, and therefore plaintiffs were obliged to do it, and thereby became damaged, and traverse of their being damaged of their own wrong.

sicknesses, maladies, and disorders under which she so laboured and languished as aforesaid, the same medicines, ointments, plaisters, and other necessary things, so found, and provided, and used, and applied as aforesaid, being proper, necessary, fit, and convenient things for the said S. S. during the time of her lying in with the said child as aforesaid, to wit, &c.; and so the said plaintiffs say, that they as such churchwardens and overseers of the poor of the said parish are damaged by reason of the premises in the condition of the said writing-obligatory mentioned, without this, that the said churchwardens and overseers, and their successors, and the said parishioners and inhabitants of the said parish have been so damaged of their own proper and voluntary acts or wrongs, or against the will of the said James, as he the said James hath by his said plea by him secondly above pleaded in bar alleged; and this, &c.; wherefore, &c.: And the said plaintiffs, as to the said plea of the said James by him thirdly above pleaded in bar, say *precludi non*; because protesting that the said James, on the day of making the said writing-obligatory, was not imprisoned or kept and detained in prison, as the said James hath in that plea above alleged; for replication nevertheless in this behalf the said plaintiffs say, that the said James of his own free will made the said writing-obligatory, with the condition above set forth, and not through or by means of any force or threat of imprisonment, as the said James hath in that plea alleged; and thus the said plaintiffs pray may be enquired of by the country, &c.: And the said plaintiffs, as to the said last plea of the said James, say *precludi non*; because protesting that the said plaintiffs did not, nor did any or either of them threaten or menace the said James to imprison or cause him to be committed to prison (*modo et forma*;) for replication nevertheless in this behalf the said plaintiffs say, that the said James of his own free will made the said writing-obligatory, with the said condition above set forth, and not through the force of any menaces or threats (*modo et forma*;) and thus they pray may be enquired of by the country, &c.

To 3d Plea, protesting defendant was not in prison; that he executed the bond of his own free will.

To 4th plea, protesting that plaintiffs did not menace defendant; that he executed the bond of his own free will.

Joinder, issue on the traverse.

And the said James as before says, that the said churchwardens and overseers, and their successors, and the said inhabitants and parishioners of the parish aforesaid have been damaged of their own proper and voluntary acts and wrongs, and against the will of the said James, as the said James hath in his said second plea alleged, and of this he puts himself upon the country, &c.

Verdict for the plaintiffs at Norfolk spring assizes, 1785.

Trinity Term, 17 and 18. Geo. II.

Plea to debt on a bastardy bond, that neither plaintiffs, their executors, or the defendant, or the said James, were damaged by reason of the said writing-obligatory.

AND said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and craves oyer of said writing-obligatory, and it is read to him in these words, to wit, &c.; he also craves oyer of the condition of the said writing-obligatory, and it is read to him in these words, to wit, &c.; which being read and heard, said defendant says, that said plaintiffs *actio non*; because he says, that from the time of the making of said writing-

(a) See Debt on Indemnity Bonds, post.

REPLICATION—PLEA.

writing-obligatory brought here into court, neither said plaintiffs, nor any or either of them, nor their nor any of their successors, nor the inhabitants or parishioners of said parish church of St. Clement, nor any or either of them were or was damnified for or by reason or means of the maintenance, education, or bringing up the said female child in said condition of said writing-obligatory mentioned, or for or by reason of any actions, suits, troubles, charges, damages, and demands whatsoever touching or concerning the same; and this, &c.; wherefore, &c. if, &c.

R. DRAPER.

Michaelmas Term, 18. Geo. II.

And said plaintiffs say, that by reason of any thing above in pleading alledged by said defendant, they said plaintiffs *precludi non*; because they say, that the parishioners of said parish of St. Clement were damnified by reason of the maintenance and bringing up of said female child in said condition of said writing-obligatory mentioned, to wit, at, &c. aforesaid, contrary to the true intent and meaning of said condition of said writing-obligatory; and this they pray may be enquired of by the country, &c.

WM. EYRE.

PREECE and ANOTHER

at suit of

TROVELL and OTHERS.

} And said defendants, by A. B. their attorney, come and defend the wrong and injury, when, &c. and pray oyer of the said writing-obligatory, and it is read to them, &c.; they also pray oyer of the condition of the said writing-obligatory, and it is read to them in these words, to wit, the condition of this obligatory is such, that whereas Ann Bond, of the parish of Much Cowan aforesaid, is now great with child, which child is likely to be born a bastard, and likely to become chargeable to the said parish of Much Cowan, and J. P. above named, by her examination, and upon oath taken before John Darban, esquire, one of his majesty's justices of the peace in and for said county of Hereford, stands charged with being the reputed father of said child; if therefore said defendants, their or either of their heirs, executors, administrators, or assigns, shall and do from time to time, and at all times hereafter fully and clearly indemnify and save harmless as well the above-named churchwardens and overseers and their successors, as also all and singular the other parishioners and inhabitants of Much Cowan aforesaid, which are or hereafter shall be of and from all manner of costs, taxes, rates, assessments, and charges whatsoever, for or by reason of the birth, nourishment, education, and maintenance, and breeding up of such child, and of and from all actions, suits, troubles, and other charges or demands whatsoever touching the same, that then this present obligation to be void, otherwise of force and virtue; which being read and heard, the defendants say, that said plaintiffs *actio non*; because they say, that after the making the said writing-

Plea to debt, bastardy, &c. that the mother removed another place where the child was born, thereby gaining legal settlement there, and if plaintiffs damnified, was of their wrong.

Vide Dougl.

DEBT ON BASTARDY BOND.

ligatory, and after said Ann was examined by and before said J. D. as in said condition mentioned, to wit, on the sixteenth of June A. D. 1786, said Ann removed herself voluntarily from the parish of Much Cowan aforesaid, in the county aforesaid, to the parish of Pencombe, in said county; and was afterwards, to wit, on same day and year last aforesaid there, to wit, at the parish of Pencombe aforesaid, delivered of the same bastard child in said condition mentioned, by reason whereof said bastard child was then and there lawfully settled in the parish of Pencombe aforesaid, nor was not, nor at any time since its birth hath been chargeable to or lawfully settled in said parish of Much Cowan: And said defendants further say, that if the above-named churchwardens and overseers of the parish of Much Cowan aforesaid have, or any of them for the time being hath at any time since the making of said writing-obligatory been damnified, by reason of the birth, nourishment, education, maintenance, or breeding up of said child, or by reason of any action, suit, trouble, and other charge and demand whatsoever touching the same, that they and each of them have been so damnified of their and each of their own proper and voluntary acts and wrongs, and against the will of said defendant, the reputed father of the said bastard child; and this they said defendants are ready to verify; wherefore they pray judgment if said plaintiffs ought to have or maintain their aforesaid action thereof against them, &c.

W. BALDWIN.

to a bastardy bond, setting forth the order of sessions mentioned in the petition, and giving a performance there- and that the plaintiffs, or the inhabitants of, had never been damnified, &c. and the plaintiff desired to take the child, and maintain it at his own expense, which defendants, &c. re-

RICHARDS } AND said defendant, by A. B. his attorney, come
against } and defends the wrong and injury, when, &c. and
HODGES. } prays oyer of said writing-obligatory, and it is read
to him in these words, to wit: Know all men, &c.; he also prays oyer of the condition of said writing-obligatory, and it is read to him in these words, to wit, the condition, &c.; which being read and heard, said defendant says, that said plaintiffs *actio non*; because he says, that the said order in the said condition mentioned was made at the general quarter sessions of the peace, &c. (the caption of the sessions) by which said order the said court of the said general quarter sessions did adjudge said defendant the reputed father of the said male bastard child mentioned in said condition, and did order that said defendant should pay to the said overseers of the poor of said parish of, &c. four pounds seven shillings money by them disbursed for and towards the charge of keeping said child since its birth, and the further sum of one pound thirteen shillings towards their charges of attending that session; and did further order that said defendants should pay, or cause to be paid to the overseers of the poor of that parish for the time being, the sum of one shilling and sixpence per week weekly and every week from the date of said order, so long as said child should continue chargeable to said parish; and that said defendant should give security to the overseers of the poor of said parish, &c. for the due performance of said order: And the said defendant further

PLEA.

ther faith, that said, &c. two of the plaintiffs, at the time of the making the said order, and from thence until the time of making said writing-obligatory, were and continued overseers of the poor of said parish of, &c.; and that he said defendant, after the making of said order, and before the making of said writing-obligatory, to wit, on said, &c. at, &c. aforesaid, paid to said, &c. the overseers of the poor of said parish of, &c. said several sums of four pounds seven shillings and one pound thirteen shillings mentioned in said order, and the weekly sum of one shilling and sixpence for every week from the time of making of said order to the time of making of said writing-obligatory, in part performance of said order, and said defendant and said J. B. as security for him said defendant in further performance of said order, did make, seal, and as their joint and several deed deliver said writing-obligatory with said conditions thereunder written, to wit, on, &c. at, &c. aforesaid: And said defendant further says, that said parish of D. at any time after the making of the said writing-obligatory until after the day of , was not in any-wise damnified touching or concerning the providing for or maintaining of said male bastard child, or of the premises mentioned in said order or condition, or any part thereof; and that after the making of said writing-obligatory, and during the time that said, &c. were and continued overseers of said poor of said parish of, &c. and before that said parish was in any-wise damnified, &c. (as before) and before said weekly sum of one shilling and sixpence mentioned in said order became due and payable, to wit, on, &c. at, &c. aforesaid, he said defendant was ready and offered said, &c. then overseers of the poor of said parish, &c. to take and receive said child into his own keeping, and from that time to provide for and maintain said child at his own charge and expence for the time then to come, and fully and clearly to acquit, discharge, and save harmless said parish of, &c. of and from all charges and expences touching and concerning the same for the time then to come, and then and there required and requested said, &c. the then overseers of the poor of said parish, to deliver said child to said defendant, that said defendant might from thenceforth maintain and provide for said child for the time then to come at his own charge and expence, and thereby indemnify, &c. (as before), and that said, &c. so then being overseers of the poor of said parish of, &c. aforesaid, then and there refused to deliver said child to said defendant for the purpose aforesaid: And said defendant further faith, that he said defendant always from the time of the making of the said writing-obligatory hitherto at, &c. aforesaid, hath been ready, and still is ready to take said child into his own keeping, &c. (as before) and that said parish, or said overseers of the poor of said parish, or any other subsequent overseers of the poor of said parish have not, nor hath any of them at any time since the request of said defendant so made for the delivery of said child to him for the purpose aforesaid, delivered, or offered to deliver the said child to said defendant; and this, &c.; wherefore, &c. if, &c.

Replication, admitting the order of sessions set out in the plea to be that mentioned in the condition, and also the performance thereof stated by defendant until, &c. to be true, but denies that defendant offered to maintain the child.

And said plaintiffs say, *precludi non*; because they say, that though true it is that said order in said plea mentioned and recited is the same order mentioned in the said condition of said writing-obligatory, and that said, &c. at the time of making said order, and from thence and until the time of making the said writing-obligatory, and for the space of two months and more next after the making of said writing-obligatory were and continued overseers of the poor of said parish of, &c. and that said defendant, after the making of the said order, and before the making of the said writing-obligatory, did pay to said, &c. the several sums of four pounds seven shillings and one pound thirteen shillings mentioned in said order, and the weekly sum of one shilling and sixpence for every week from the time of the making of said order until the time of the making of said writing obligatory in part performance of said order, and that said defendant and said J. B. as security for him said defendant in further performance of said order, did make, seal, and as their joint and several deed deliver said writing obligatory, with the said condition thereunder written, as said defendant hath above in pleading also alleged; nevertheless said plaintiffs for replication in this behalf say, that said defendant, after the making of said writing obligatory, and during said time that said, &c. were and continued overseers of the poor of said parish, did not offer said, &c. to take and receive said child into his own keeping, and to provide for and maintain said child at his own charge and expence, in manner and form as said defendant hath above in pleading alleged; and thus they pray may be enquired of by the country, &c.

D. POOLE.

Plea to debt on bastardy bond. That the woman was married, and the child born in lawful wedlock.

AND the said J. D. by W. D. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said writing, and it is read to him, &c.; and he also prays oyer of the condition of the said writing, and it is read to him in these words following, to wit. the condition of this obligation is such, that whereas Ann Pogity, of Minster aforesaid, *is now big with child*, and the said child or children whereof she is now pregnant *is or are likely to be born a bastard or bastards*, and to be chargeable to the said parish of M.: And whereas the said J. D. hath consented and agreed to be harmless and keep indemnified the said parish of M. of and from all costs, charges, and expences on account of the said bastard child or children of the said A. P. before or during the time of her lying in of such child or children; if therefore the said J. D. his heirs, executors, and administrators shall and do well and truly save harmless and keep indemnified the said churchwardens and overseers, and their successors, churchwardens and overseers of the poor of the said parish of M. for the time being, and the rest of the inhabitants of the said parish of M. from time to time of and from all costs, charges, damages, and expences which they or either of them shall and may at any time

or

or times hereafter sustain, expend, or be put, or be obliged to pay for or on account of the said bastard child or children, or of the said A. P. before or during the time of her lying in of such bastard child or children, and shall and do entirely indemnify and save harmless the said parish of M. thereof and therefrom, then this obligation to be void, or else to be and remain in full force and virtue; which being read and heard the said J. D. saith, that he ought not to be charged with the debt aforesaid, by virtue of the said writing, because he saith, that the said Ann in the said condition named, long before and at the time of making the said writing, to wit, on the second day of August, A. D. 1765, at the parish aforesaid, in the county aforesaid, *was a married woman*, and the true and lawful wife of one J. P. and that the child with which the said Ann was pregnant at the time of making the said writing afterwards, to wit, on the tenth day of January 1766, at M. aforesaid, *was born in true and lawful wedlock*, and was not born a bastard; and this he the said J. D. is ready to verify; wherefore he prays judgment if he ought to be charged with the said debt by virtue of the said writing, &c.: And for further plea in this behalf, the said J. D. by leave, &c. according, &c. saith, that he ought not to be charged with the debt aforesaid by virtue of the said writing, because he saith, that the said Ann in the said condition named, long before and at the time of making the said writing, *was a married woman*, to wit, at M. aforesaid, in the county aforesaid, by reason of which the said writing is void in law; and thus, &c. wherefore, &c.: And for further plea, &c. the said J. D. by like leave, &c. saith, that he ought not to be charged with the debt aforesaid by virtue of the said writing, because he saith, that the said churchwardens and overseers of the poor, and their successors, churchwardens and overseers of the poor of the said parish of M. for the time being, and the rest of the inhabitants of the said parish of M. have not, nor hath any or either of them been in any manner damaged for or by reason of any bastard child born of the said Ann in the said condition mentioned, or of the said Ann during the time of her lying in of a bastard child or children; and thus, &c.: And for further plea, &c. the said J. D. by like leave, &c. saith, that he ought not to be charged with the debt aforesaid by virtue, &c. because he saith, that he at the time of making the said writing *was imprisoned* by J. R. R. B. T. H. and W. T. and others, by their contrivance, to wit, at M. aforesaid, in the county aforesaid, and was then detained in prison until he the said J. D. *by force and duress* of imprisonment then and there made the said writing to the said J. R. &c. wherefore he prays judgment, &c.

W. BALDWIN.

And the said J. R. &c. &c. as to the said plea of the said J. D. by him first above pleaded in bar, say, that they by reason of any thing in that plea alledged-ought not to be barred from having their

woman, and the child was born a bastard.

their aforesaid action maintained against him the said J. D. because protesting that the said Ann in the said condition named, at the time of making of the said writing, or at the time of the birth of the child mentioned in the said bond, *was not a married woman*, nor the true and lawful wife of the said J. P. as the said J. D. has alledged; yet for a reply in this behalf, the said J. R. &c. &c. say, that the child with which the said Ann was pregnant at the time of making of the said writing, was afterwards, and before the exhibiting of the bill of the said J. R. &c. to wit, on the tenth day of March 1766, *born a bastard*, to wit, at the parish of M. aforesaid, in the said county, and this they pray may be enquired of by the country,

Demurrer to 2d plea.

And the said J. R. &c. as to the said plea of the said J. D. by him secondly above pleaded in bar, say, that by reason, &c. because they say, that the plea aforesaid and the matter therein contained are not sufficient in law to bar the said J. R. &c. from having or maintaining their aforesaid action thereof against the said J. D. to which said plea the said J. R. &c. are under no necessity, nor are they in anywise bound by the law of the land to answer; and this they are ready to verify; wherefore for want of a sufficient plea in this behalf, the said J. R. &c. pray judgment and their damages, by occasion of the premises, to be adjudged to them, &c.:

To 3d plea, expended large sums of money for support of child to prevent its perishing.

And the said J. R. &c. as to the said plea of the said J. D. by him thirdly above pleaded in bar, say, that by reason, &c. because they say, that after the making of the said writing, and before the exhibiting of the said bill of the said J. R. &c. to wit, on, &c. the said child in the said condition mentioned was born in the parish of M. aforesaid, and that neither the said J. D. nor any other person during a long space of time after the making of the said writing obligatory, and after the birth of the said child, and before the day of exhibiting the said bill of the said J. R. &c. that is to say, for the space of five years, to wit, from the said tenth day of March 1766, at M. aforesaid, did provide any maintenance or nourishment for the support of the said child, by reason whereof the parishioners of the said parish, lest the said child should perish for want of nourishment during that time, were compelled to pay, lay out, and expend, and did pay, lay out, and expend a large sum of money, to wit, the sum of one hundred pounds of lawful money of Great Britain, in and for the maintenance, nourishment, and support of the said child during the time aforesaid, that is to say, at the parish of M. aforesaid, and to the parishioners of the said parish are dammified; and this, &c.; wherefore they pray judgment and their debt aforesaid, together with their damage, by reason of the detaining thereof, &c. to be adjudged to them, &c.:

To 4th plea, defendant was at large.

And the said J. R. as to plea fourthly pleaded, because they say, that the said J. D. at the time of the making of the aforesaid writing-obligatory was at large, and out of any prison, and of his own accord made and executed the said writing-obligatory to the said J. R. &c. of his the said J. D.'s

own

REJOINDER, AND A REPLICATION.

own free will, and not by any force and dures of imprisonment of the said J. D. - the said J. D. hath above in his said fourth plea alledged; and this they pray, &c.

T. WALKER.

And the said J. D. as to the plea of the said J. R. &c. by them above in reply pleaded to the said plea of the said J. D. by him first above pleaded in bar and wherein the said J. R. &c. have put themselves upon the country, the said J. D. doth so likewise; and as to plea thirdly pleaded, the said J. D. saith, that they, by reason of any thing by the said J. R. &c. above in that replication alledged ought not to have or maintain their aforesaid action thereof against him, because he says, that the parishioners of the said parish of M. are not damnified by reason of the said bastard child in the said condition mentioned, in manner and form as the said J. R. &c. have above in that replication alledged; and of this he puts, &c. (*similiter* to the last issue tendered by replication.)

W. BALDWIN.

AND the said William, as to the said plea of the said John and Walter, by them secondly above pleaded in bar, saith, that notwithstanding any thing in that plea alledged, the said John and Walter ought to be charged with the said debt by virtue of the said writing, because he saith that the said Mary W. after the making of the said writing-obligatory, and before the exhibiting of the bill of the said William, to wit, on, &c. was delivered of the said child in the said condition mentioned, which she the said Mary had sworn that the said Walter was the reputed father thereof by her, to wit, at Maidstone aforesaid; and thus the said William prays, &c.: And as to plea lastly pleaded in bar, the said William says, that notwithstanding any thing in that plea alledged, the said John and Walter ought, &c. because he says, that the said Mary W. after the making of the said writing obligatory, and before the exhibiting of the bill of the said William, to wit, on, &c. was delivered of the said child in the said condition mentioned, which the said Mary had sworn that the said Walter was the reputed father thereof by her, to wit, at M. aforesaid, which said child was then and there a bastard, and is still living, to wit, at M. aforesaid: And the said William further saith, that afterwards, to wit, &c. eighteenth pence of the said weekly sum in the said condition mentioned, for one week, elapsed since the birth of the said child and ended on the same day and year last-mentioned became due; yet the said John and Walter, although often requested, have not, nor hath either of them paid or cause to be paid the said eighteenth pence either to the said William Y. or any of his successors in the office of overseer of the poor of the parish of Hucking aforesaid, or to the said Mary W. but have hitherto refused

DEBT ON BOTTOMRY, &c.—REPLICATION.—PLEA:

and still do refuse to pay the same, and the same still remain wholly due in arrear and unpaid, contrary to the form and effect of the said condition; and this the said William is ready to verify, &c.

JAMES WALLACE.

See Debt on Indemnity Bonds, post.

ON BOTTOMRY AND RESPONDENTIA BONDS.

Plea to a respondentia or bottomry bond, that after the ship sailed and before its return it was sunk and the goods lost.

AND the said defendant, &c. and craves oyer of the said writing-obligatory in the said declaration mentioned, and it is read to him in these words, that is to say: Know all men, &c.; he also craves oyer of the condition of the said writing-obligatory, and it is read to him in these words, that is to say, whereas, &c. &c. which being read and heard, the said defendant says *actio non*; because he says, that at the time of the making of the said writing-obligatory, divers merchandizes and effects of the said H. G. of a large value, to wit, of the value of, &c. were laden in and on board the said ship or vessel in the said condition of the said writing-obligatory mentioned, and that the said ship or vessel did with all convenient speed, after the making of the said writing-obligatory, to wit, on, &c. in the said declaration mentioned, proceed and sail from and out of the river Thames on a voyage towards and for the East Indies, beyond the Cape of Good Hope, to wit, towards and for Bengal, in the East Indies afore said, with the said merchandizes and effects on board her, and afterwards and before the said ship arrived at any port or place whatsoever beyond the Cape of Good Hope, and before her return to the river of Thames, and within thirty-six calendar months after the making of the said writing-obligatory, to wit, on, &c. sailing and proceeding on her said voyage was in the high seas, and before that the said H. had disposed of any of the said goods and merchandizes of the said H. so laden and being on board, it was by and through the mere perils and dangers of the sea unavoidably overfet, sunk, and perished in the seas, and all the goods and merchandizes whatsoever which the said H. so had on board the said ship or vessel then and thereby sunk and perished in the seas, and became and were wholly lost and destroyed; and this, &c. wherefore, &c. if, &c.

T. WALLER.

Replication, asserting that the ship did not overfet, &c. so that the goods were not lost, &c.

And the said plaintiff, as to the said plea of the said defendant by him above pleaded in bar, says, that he by any thing therein contained (*precludi non*;) because protesting that the said ship, in the said plea mentioned, did not overfet, sink, or perish in manner and form as the said defendant hath in his said plea in that behalf alledged; nevertheless for replication in this behalf the said plaintiff says, that the said goods and merchandizes in the said plea in that behalf mentioned, which the said H. had on board the said ship or vessel, as is in the said plea in that behalf mentioned,

mentioned, did not, nor did any part thereof sink or perish in the seas, or became wholly lost or destroyed in manner and form as the said defendant hath above in his said plea in that behalf alleged; and this he the said plaintiff prays may be enquired of by the country, and the said defendant doth the like, &c. therefore, &c.

BRYSON } **AND** the said Peter Bryson, by A. B. his attorney,
at suit of } comes and defends the wrong and injury, when, &c.
Pocock } and craves oyer of the said writing-obligatory in the
 said declaration mentioned, and it is read to him in these words,
 to wit, [copy the bond] he also craves oyer of the condition of
 the said writing-obligation, and it is read to him in these words
 [copy the condition, which was to pay money on *respondentia*],
 which being read and heard the said P. says, that the said W. P.
actio non; because he saith, that at the time of making the said
 writing-obligatory, divers merchandizes and effects of the said P.
 of a large value, to wit, of the value of one thousand two hun-
 dred pounds, were laden and on board the ship or vessel in the
 condition of the said writing-obligatory mentioned, and that the
 said ship or vessel did with all convenient speed after the time of
 making the said writing-obligatory, to wit, on the same day and
 year in the same declaration mentioned, proceed and sail from and
 out of the river of Thames on a voyage towards and for the East
 Indies, beyond the Cape of Good Hope, to wit, towards and for
 Bengal, in the East Indies aforesaid, with the said merchandizes
 and effects on board her, and afterwards, to wit, on, &c. arrived
 at the East Indies aforesaid, to wit, at a certain place there called
 Calcutta, in Bengal river, with the said merchandizes and effects
 of the said P. on board thereof; and the said P. did then and there
 sell the said merchandizes and effects for a large sum of money,
 to wit, for the sum of one thousand five hundred pounds, and then
 and there laid out and expended the whole produce thereof in the
 purchase of other merchandizes and effects, and with the said pro-
 duce thereof bought divers other merchandizes and effects of a
 much greater value, to wit, of the value of one thousand nine
 hundred pounds, and then and there shipped the said last-men-
 tioned merchandizes and effects on board the said ship, and that
 the said ship with the said last-mentioned merchandizes and effects
 on board thereof (the said last-mentioned merchandizes and effects
 being all the merchandizes and effects whatsoever which the said
 P. B. or T. B. or either of them acquired during the said voyage)
 did afterwards, to wit, on, &c. depart and set sail from Bengal
 river aforesaid, in the East Indies aforesaid; and whilst she was
 proceeding in her said voyage to the river of Thames aforesaid,
 and within thirty-six calendar months from the day of the date of
 the said writing obligatory in the said declaration mentioned, to
 wit, on, &c. the said ship was by and through the mere force of
 certain hurricanes of wind and stormy weather, and by the dan-

Plea to a de-
 claration on a
respondentia bond
 (oyer of bond
 and condition
 which was for
 the payment of
 money on *re-*
spondentia) that
 after the making
 of the bond the
 defendant failed
 with the goods
 for the East
 Indies, and there
 sold them and
 laid out the
 produce in other
 goods to bring
 home, and then
 in coming home
 the ship was
 lost, and only
 a part of the
 goods were
 saved, and that
 the defendant
 after his arrival
 paid the plaintiff
 an average
 part of what
 was saved.

gers

gers of seas there, to wit, in Bengal river aforesaid, sunk, broke to pieces, foundered, wrecked, and wholly lost, and a part only of the said last-mentioned merchandizes and effects of a small value, to wit, of the value of seven hundred and twenty-one pounds were saved, and all the rest of the said last mentioned merchandizes and effects were then and there wholly lost, to wit, at, &c.: And the said P. further saith, that he the said P. afterwards, and within six months next after the said loss, to wit, on, &c. at, &c. paid to the said William the sum of two hundred and thirty pounds of, &c. as and for a just and proportionable average on all the said merchandizes and effects which were not unavoidably lost as aforesaid; and the said sum of two hundred and thirty pounds so paid as aforesaid, then and there was a just and proportionable average on all the said last-mentioned merchandizes and effects which were not unavoidably lost as aforesaid, that is to say, at London aforesaid, in the parish, &c. and this, &c.

Replication, admitting that the ship was lost, but protesting that what defendant paid plaintiff was not an average or proportionable part.

And the said William says, that he by reason of any thing by the said P. in his said plea above alledged, *precludi non*; because he says, that true it is at the time of making the said writing-obligatory, divers merchandizes and effects of the said P. of a large value were laden and on board the said ship or vessel in the said condition of the said writing-obligatory mentioned; and that the said ship or vessel did with all convenient speed, after the time of making the said writing-obligatory, proceed and sail from and out of the said river of Thames on a voyage towards and for the East Indies, beyond the Cape of Good Hope, with the said merchandizes and effects, and afterwards arrived at the East Indies aforesaid with the said merchandizes and effects of the said P. on board thereof; and that the said P. did then and there sell the said merchandizes and effects for a large sum of money, and then and thereafter out and expended the whole produce thereof in the purchase of other merchandizes and effects, and with the said produce thereof bought other merchandizes and effects of much greater value, and there shipped the said last-mentioned merchandizes and effects on board the said ship; and that the said ship with the said last-mentioned merchandizes and effects on board thereof (the same being all the merchandizes and effects which the said P. and T. B. or either of them acquired during the said voyage) did afterwards depart and sail from Bengal river aforesaid, in the East Indies aforesaid, on her said voyage, with intent to proceed from thence into the said river of Thames, and that soon after she departed from Bengal river aforesaid, in the East Indies aforesaid, and whilst she was proceeding on her voyage to the river of Thames aforesaid, and within thirty-six calendar months from the day of the date of the said writing-obligatory in the said declaration mentioned, the said ship was by and through the dangers of the seas wholly lost; but the said William protesting that a great part of the said last-mentioned merchandizes and effects of greater value than the value of seven hundred and twenty-one pounds in the said plea mentioned,

to wit, of the value of eight hundred and fifty-six pounds, were saved; for replication in this behalf says, that the said sum of two hundred and thirty pounds, paid by the said P. to the said W. as in the said plea is mentioned, was not, nor is a just and proportionable average on all the said merchandizes and effects which were not unavoidably lost as aforesaid; and thus the said William prays may be enquired of by the country, &c.

STEVENS } AND said Robert, by A.B. his attorney, comes Plea to an action of debt on a respondentia bond, after oyer of bond and condition, that the money was not lent, but a debt previously owing.
at suit of } and defends the wrong and injury, when, &c. and
MARCELLO. } saith, that said writing-obligatory is not his deed, in manner and form as said Anthony hath above thereof complained against him; and of this he puts himself upon the country, &c. And for further plea in this behalf he said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, craves oyer of the said writing-obligatory, and it is read to him in these words, to wit: "Know all men, &c. (set out the bond *verbatim*), he also craves oyer of the condition of said writing-obligatory, and it is read to him in these words, to wit, &c. (set forth the condition *verbatim*); which being read and heard, the said defendant saith that said plaintiff *actio non*; because he saith, that the said sum of one hundred and thirty-six pounds in the condition of said writing-obligatory mentioned to have been by him said plaintiff, on the day of the date of said writing obligatory, lent unto the said Thomas Mathewson in said writing-obligatory, and the condition thereof named, upon merchandize and effects to that value laden or to be laden on board said ship or vessel called the Duke of Cumberland in said condition mentioned, was not as is therein untruly suggested, nor was any part thereof lent by him said plaintiff, or by any other person whomsoever upon any merchandizes or effects whatsoever laden or to be laden on board said ship or vessel called the Duke of Cumberland in said condition mentioned, but the said sum of one hundred and thirty-five pounds in said condition mentioned was money, long before the date of said writing-obligatory, due and owing from the said Thomas Mathewson to said plaintiff, to wit, for work and labour done and performed by said plaintiff in and about the business of said Thomas Mathewson, and at his request, and for materials used and applied in and about that business by him said plaintiff found and provided for said Thomas Mathewson, and at his request, to wit, at Westminster aforesaid, for which reason the said writing-obligatory was and is void at law; and this he said defendant is ready to verify; wherefore he prays judgment if said plaintiff ought to have his aforesaid action thereof maintained against him, &c.

J. MORGAN.

MARSHAL

Trinity Term, 13. & 14. Geo. II.

Plea to debt on a *respondentia* or bottomry bond, that the ship did not safely arrive at, &c. within, &c.

MARSHAL

at suit of

TAYLOR and OTHERS, &c.

AND said defendant, by A. B. his attorney, comes and defends the wrong, &c. and prays oyer of said writing-obligatory, and it is read to him, &c.; he also prays oyer of the condition of said writing-obligatory, and it is read to him in these words, to wit, &c. which being read and heard, said defendant says, that he as nephew and heir of said Robert Marshall ought not to be charged with the said debt by virtue of said writing; because he saith, that said ship in which said R. M. sent said goods in said condition mentioned, in order for them to be carried to Newfoundland in said condition mentioned, did not safely arrive at any port in Newfoundland any time in the next summer after the making of said writing; and this, &c.; wherefore, &c. if he said defendant ought to be discharged with said debt, as nephew and heir of said Robert Marshall, by virtue of said writing, &c.

R. DRAPER.

Replication to a plea of *respondentia* or bottomry bond, protesting that ship was not taken, says that she safely arrived at, &c.

And said plaintiffs say, that they, by reason of any thing by said defendant above in pleading alledged, *precludi non*; because protesting that said ship in which said Robert sent said goods was not taken by the enemy, and that same ship did not happen to miscarry, nor was lost; said plaintiffs for replication say, that said ship in which said Robert sent said goods in said condition mentioned, did safely arrive in Newfoundland aforesaid in the next summer after the making said writing; and this they pray may be enquired of by the country, &c.

Trinity Term, 33. Geo. III.

Precipe in debt.

DICKSON

against

LONDON, to wit. Command Richard Parks, late of London, merchant, and Herbert Harris, late of the same place, merchant, that justly and without delay they render to Thomas Dickson five thousand seven hundred and eighty-six pounds ten shillings and one penny of lawful money of Great Britain, which they owe to and unjustly detain from him as it is said, and unless, &c.

The action being in debt, the bond need not be set out in the *precipe*, as it is in the declaration, for the demand being of a firm certain the original process is summons, upon which a *captus* is given

by stat. 2c. Ed. 3. c. 17. and the particulars of the demand need not be stated till you come to declare. The plaintiffs sue upon this original will be ten shillings on the penalty feed for. T. BARROW.

Declaration in debt on a *respondentia* bond for Arcot rupees, averring their value in English money, against two joint obligors, where one is outlawed, being out of the kingdom at the time of the commencement of the action.

London, to wit. Richard Parks, late of London, merchant, was summoned to answer Thomas Dickson, a plea that he render to the said Thomas five thousand seven hundred and eighty-six pounds ten shillings and one penny of lawful money of Great Britain, which he the said Richard owes to and unjustly detains from the said Thomas, and whereupon the said Thomas, by William

Chippindel,

Chippendel, his attorney, complains ; for that whereas the said Richard, and one Herbert Harris, (which said Herbert Harris is in due manner outlawed in the court of our lord the king, before the king himself, at Westminster) heretofore, to wit, on the fifth day of May, in the year of Our Lord 1777, at Dinegapore, in the East Indies, that is to say, at London, in the parish of St. Mary-le-Bow, in the ward of Cheap, by their certain writing-obligatory, sealed with their seals, and now shewn to the court of our lord the king, before the king himself here, the date whereof is the same day and year aforesaid, acknowledged themselves to be holden and firmly bounden to the said Thomas in the penal sum of Arcot rupees fifty-two thousand, for the payment of which well and truly to be made unto the said Thomas, his executors, administrators, or assigns, they did bind themselves, their executors, administrators, and assigns by the said writing-obligatory : And the said Thomas avers, that the said sum of money mentioned in the said writing-obligatory at the time of making thereof as aforesaid was of a large value, to wit, of the value of five thousand seven hundred and eighty-six pounds ten shillings and one penny of lawful money of Great Britain, to wit, at London aforesaid, in the parish and ward aforesaid, whereby (the same being still wholly unpaid) an action hath accrued to the said Thomas to demand and have of and from the said Richard the said sum of five thousand seven hundred and eighty-six pounds ten shillings and one penny of lawful money of Great Britain (the said sum of five thousand seven hundred and eighty-six pounds ten shillings and one penny being the value in lawful money of Great Britain of the said sum of money mentioned in the said writing-obligatory at the time of making thereof) : Yet the said Richard, although often requested, hath not yet paid the said sum of five thousand seven hundred and eighty-six pounds ten shillings and one penny above demanded, but to pay the same, or any part thereof, to the said Thomas hath hitherto wholly refused, and still doth refuse, to the damage of the said Thomas of one hundred pounds ; and therefore he brings his suit, &c.

And the said Richard, by James Mainstone, his attorney, comes ^{1st Plea,} and defends the wrong and injury, when, &c. and craves oyer of oyer of the said writing-obligatory, and it is read to him, &c. he also ^{bond.} craves oyer of the condition of the said writing-obligatory, and it is read to him in these words, to wit, whereas the above bounden Herbert Harris and Richard Parks have taken up and received of captain Thomas Dickton the full and just sum of Arcot rupees twenty-six thousand, tales eight thousand three hundred and thirty-three, and one third to run at *respondentia* on the ship Favourite, Richard Parks, commander, from the port of Calcutta to Canton : And whereas the ship Favourite having lost her passage to China, the above-mentioned Herbert Harris and Richard Parks do bind themselves to pay double the former premium of twelve *per cent.* making twenty-four *per cent.* on the principal, and in case of the ship Favourite not arriving in China before the expiration

DEBT ON BOTTOMRY, &c.—PLEA.

ration of the month of November 1777, an additional premium from that time, at and after the rate of two *per cent. per mensem*, in consideration whereof the usual risks of the seas, rivers, enemies, fires, and pirates, &c. to be on account of the said captain Thomas Dickson: Now the condition of this obligation is such, that if the above named Herbert Harris and Richard Parks, their executors, administrators, or assigns do well and truly pay, or cause to be paid unto the said captain Thomas Dickson, his executors, administrators, or assigns, the full and just sum of tales, eight thousand three hundred and thirty-three, and one third, being the principal of this bond, together with the premium which shall become due thereupon *at or before the expiration of twenty-one days after the safe arrival of the said ship Favourite at her moorings, at Wampoo, in China, or in case of the loss of the said ship (which God forbid) such an average as by custom shall become due on the salvage, then this obligation to be void and of no effect, otherwise to remain in full force and virtue, having executed two bonds of this tenor and date, one of which being accomplished, the other to be void, which being read and heard the said Richard saith, that the said writing-obligatory is not his deed*; and of this he puts himself upon the country, &c.: And for further plea in this behalf, the said Richard, by leave, &c. *assio non*; because he says, that the said ship Favourite, in the condition of the said writing-obligatory mentioned, heretofore, to wit, on the fifth day of May, in the year of Our Lord 1777 (he the said Richard then being commander thereof), set sail and departed on her voyage, to wit, on her second voyage from Calcutta towards and for Canton, and proceeded on her said voyage, and afterwards and before the expiration of the month of November, in the year of Our Lord 1777, to wit, on the thirty-first day of October, in the said year, arrived in her said voyage at Canton, to wit, at her moorings at Wampoo, in China, and that afterwards, and after the expiration of twenty-one days after the safe arrival of the said ship Favourite at her moorings, at Wampoo, in China, that is to say, on the eighteenth day of February, in the year 1778, to wit, at London aforesaid, in the parish and ward aforesaid, the said Richard paid the said principal sum of tales eight thousand three hundred and thirty-three, and one third, being the principal sum in the said writing-obligatory mentioned, together with all the premium and interest which was then become due thereupon, that is to say, at the rate of twenty-four *per cent.* on the principal sum, according to the form of the statute in such case made and provided; and this he the said Richard is ready to verify; wherefore he prays judgment if the said Thomas ought to have or maintain his aforesaid action thereof against him the said Richard, &c.: And for further plea in this behalf, the said Richard by like leave, &c. *assio non*; because he says, that the said ship Favourite, in the condition of the said writing-obligatory, heretofore, to wit, on the fifth day of May, in the year 1777 (he the said Richard then being the commander thereof), set sail and departed on her voyage,

2d Plea, *Non est factum*, stating the special circumstances, and *solvit postea*.

3d Plea, set off, *inter alia* for East India interest 24 *per cent.*

PLEA TO DEBT ON BOTTOMRY, &c.—SET OFF.

to wit, her second voyage from Calcutta towards and for Canton, and proceeded on her said voyage, and afterwards and before the expiration of the month of November, in the year 1777, to wit, on the thirty-first day of October in the said year, arrived in her said voyage at Canton, to wit, at her moorings at Wampoo, in China, that is to say, at London aforesaid, in the parish and ward aforesaid: And the said Richard further saith, that at the time of the suing out of the original writ of the said *Thomas if there was* any thing due and owing from the said Richard and Herbert to the said Richard Thomas on the said writing-obligatory by the condition thereof for principal and premium or interest of the said sum of tales, to wit, eight thousand three hundred and thirty three, and one third, mentioned in the said condition, a much less sum of money than the sum of Arcot rupees, fifty-two thousand, in the said writing-obligatory mentioned, of the value in the declaration in that behalf mentioned, was due and owing from the said Richard and Herbert to the said Thomas, and that such money so due and owing from the said Richard to the said Thomas did not exceed a certain number of tales, to wit, ten thousand three hundred and thirty-three tales and one fourth of a tale, and no more, being of a certain value, to wit, of the value of three thousand four hundred and thirty pounds thirteen shillings and elevenpence three farthings of lawful money of Great Britain, to wit, at London aforesaid, in the parish and ward aforesaid: And the said Richard further says, that the said Thomas long before and at the time of suing forth his original writ, to wit, at London aforesaid, in the parish and ward aforesaid, was indebted unto the said Richard and Herbert in divers sums of money, amounting in the whole to a large sum of money then due and owing from the said Richard and Herbert to the said Thomas on the said writing-obligatory by the condition thereof, to wit, in the sum of three thousand pounds, for money by the said Thomas before then had and received to the use of the said Richard and Herbert, and for other money by the said Richard and Herbert before then laid out, expended, and paid for the said Thomas, and at his special instance and request, and for other money by the said Richard and Herbert before then lent and advanced to the said Thomas, and at his special instance and request, and for the work and labour, care and diligence of the said Richard and Herbert by them before then done and performed in and about the business of the said Thomas for the said Thomas at his special instance and request, and for divers goods, wares, and merchandizes before then sold and delivered by the said Richard and Herbert to the said Thomas, and at his special instance and request, and upon the balance of an account before them stated by and between the said Richard and Herbert and the said Thomas, and in another large sum of money, to wit, the sum of six thousand one hundred and forty pounds for interest on the said sum of three thousand pounds, for a long space of time, to wit, for the space of thirteen years, that is to say, at the usual rate of interest in the East Indies, to wit, at the rate of twenty-four pounds for one hundred

4th Plea.

pounds for one year, and so in proportion for a larger or lesser sum than one hundred pounds, and for a larger or lesser space of time than one year, the debt aforesaid so due and owing from the said Thomas to the said Richard and Herbert having been contracted in the East Indies, to wit, at Dinegapore aforesaid, in the said declaration mentioned, that is to say, at London aforesaid, in the parish and ward aforesaid; and this he the said Richard is ready and willing, and hereby offers to set off and allow unto the said Thomas, out of the said money so due and owing from him unto the said Richard and Herbert, all money due and owing from him unto the said Richard and Herbert, all money due and owing unto the said Thomas on the said writing-obligatory, by the condition thereof, according to the form of the statute in such made and provided; and this he the said Richard is ready to verify; wherefore he prays judgment if the said Thomas ought to have his aforesaid action thereof maintained against him the said Richard, &c.: And for further plea in this behalf, the said Richard, by like leave of the court here for this purpose first had and obtained, according to the form of the statute, &c. *ad id non*; because he says, that the ship *Favourite*, in the condition of the said writing-obligatory mentioned, heretofore, to wit, on the fifth day of May, in the year of Our Lord 1777, he the said Richard then being the commander thereof, set sail and departed on her voyage, to wit, her second voyage from Calcutta towards and for Canton, and proceeded on her voyage, and afterwards, and before the expiration of the month of November, in the year of Our Lord 1777, to wit, on the said thirty-first day of May, in the said year, arrived in her said voyage at Canton, to wit, at her moorings at Wampoo, in China, that is to say, at London aforesaid, in the parish and ward aforesaid: And the said Richard further saith, that at the time of suing forth the original writ of the said Thomas there was due and owing from the said Richard and Herbert to the said Thomas on the said writing-obligatory by the condition thereof for principal and premium or interest of the said sum of tales eight thousand three hundred and thirty-three, and one third, mentioned in the said condition, a much less sum of money than the sum of Arcot rupees fifty-two thousand in the said writing-obligatory mentioned, of the value in the said declaration in that behalf mentioned, to wit, the sum of ten thousand three hundred and thirty-three tales and one-fourth of a tale, and no more, being of a certain value, to wit, of the value of three thousand four hundred and thirty pounds thirteen shillings and elevenpence three farthings of lawful money of Great Britain, to wit, at London aforesaid, in the parish and ward aforesaid: And the said Richard further saith, that the said Thomas long before and at the time of suing out his original writ, to wit, at London aforesaid, in the parish and ward aforesaid, was indebted unto the said Richard and Herbert in divers sums of money, amounting in the whole to a larger sum of money than the money due and owing from the said Richard and Herbert to the said Thomas on the said writing-obliga-

tory by the condition thereof, to wit, in the sum of three thousand pounds for money by the said Thomas then had and received to the use of the said Richard and Herbert, and for other money by the said Richard and Herbert before then laid out, expended, and paid for the said Thomas, and at his special instance and request, and for other money by the said Richard and Herbert before then lent and advanced to the said Thomas, and at his special instance and request, and for the work and labour, care and diligence by the said Richard and Herbert before then done and performed in and about the business of the said Thomas, for the said Thomas, and at his special instance and request, and for divers goods, wares, and merchandizes before then sold and delivered by the said Richard and Herbert to the said Thomas, and at his special instance and request, and upon the balance of an account before then stated by and between the said Richard and Herbert and the said Thomas, and in another large sum of money, to wit, the sum of six thousand one hundred and forty pounds for interest of the said sum of three thousand pounds for a long space of time, to wit, for the space of thirteen years, that is to say, at the rate of interest in the East Indies, to wit, at the rate of twenty-four pound for one hundred pounds for one year, and so in proportion for a larger or lesser sum than one hundred pounds, and for a larger or lesser space of time than one year, the debt aforesaid so due and owing from the said Thomas to the said Richard and Herbert having been contracted in the East Indies, to wit, at Dinegepore aforesaid, in the said declaration mentioned, that is to say, at London aforesaid, in the parish and ward aforesaid; and that he the said Richard is ready and willing, and hereby offers to set off and allow unto the said Thomas out of the said money so due and owing from him unto the said Richard and Herbert, all money due and owing to the said Thomas on the said writing obligatory by the condition thereof, according to the form of the statute in such case made and provided; and this he the said Richard is ready to verify; wherefore he prays judgment if the said Thomas ought to have his aforesaid action thereof maintained against him, &c.

JOHN MORGAN.

And the said Thomas, as to the said plea of the said Richard by him secondly above pleaded in bar says, that notwithstanding anything by the said Richard in that plea above alledged he the said Thomas ought not to be barred from having and maintaining his aforesaid action thereof against the said Richard; because he says, that the said Richard did not pay to the said Thomas the said principal sum of tales eight thousand three hundred and thirty-three, and one-third, the principal sum in the said writing-obligatory mentioned, together with all the principal and interest which was then become due thereon, in manner and form as the said Richard hath in and by his said plea in that behalf above alledged; and thus the said Thomas prays may be enquired of by the country jury. And the said Thomas as to the said plea of the said Richard by him thirdly

Replication,
taking issue on
each plea.

DEBT ON BOTTOMRY, &c.—REPLICATION.

above pleaded in bar, says, that notwithstanding any thing by the said Richard in that plea above alledged he the said Thomas ought not to be barred from having and maintaining his aforesaid action thereof against him the said Richard; because protesting that that plea in manner and form as the same is above pleaded and the matters therein contained are not sufficient in law to bar the said Thomas from having his said action against the said Richard; nevertheless for replication thereto the said Thomas saith, that the said Thomas, at the time of the suing forth of the original writ of the said Thomas against the said Richard, was not nor is indebted to the said Richard and Herbert in manner and form as the said Richard hath in and by his said last-mentioned plea above alledged; and this he the said Thomas prays may be enquired of by the country: And the said Thomas, as to the said plea of the said Richard by him lastly above pleaded in bar, says, that notwithstanding any thing by the said Richard in that plea above alledged he the said Thomas ought not to be barred from having and maintaining his aforesaid action thereof against the said Richard; because protesting that that plea in manner and form as the same is above pleaded, and the matters therein contained are not sufficient in law to bar the said Thomas from having his said action against the said Richard; nevertheless for replication thereto the said Thomas saith, that the said Thomas, at the time of suing forth the original writ of the said Thomas against the said Richard, was not nor is indebted to the said Richard and Herbert in manner and form as the said Richard hath in and by his said last-mentioned plea above alledged; and this he the said Thomas prays may be enquired of by the country, &c.

T. BARROW.

• This cause came on to be tried at Guildhall, London, at sittings after Hilary Term, 3d March, 1794, before Lord Kenyon and a special jury, and Mr. Eiskine, for the plaintiff, asserting that defendant had paid principal and premium three months after the expiration of twenty-one days from the ship's arrival at her moorings in Wampoa river, at Canton, but refused to pay any thing for the three months, for which this action was brought, Lord Kenyon on reading the bond observed, that he had great doubt how far the subsequent interest could be recovered in this form of action, plaintiff having accepted the principal to which the interest was only accessory, as the shadow follows the substance. [see the

condition of the bond]; therefore the bond was thereby satisfied under the Stat. of Ann, on the plea of *solat post. diem*. The first plaintiff ought to have refused to accept the principal and premium when offered, unless the full sum claimed had been tendered, and then this action might have been maintained, and defendant could not have pleaded the tender under the Statute of Ann. Upon which he recommended plaintiff to be non-suited, reserving the point of Mr. Eiskine desired it. Plaintiff called.

✱

It strikes me that a Count in debt for interest, and another upon an account stated would have maintained the action.

(a). ON INDEMNITY BOND AND TO ACCOUNT.

SOPHIA JONES, WIDOW AND ADMINIS-
TRATRIX OF JENKIN JONES, DECEASED,
against

THOMAS HULL.

Debt on bond, } THAT defendant, on the eighteenth day at suit of ad-
ministratrix a-
of March 1780, at ministratrix a-
London, to wit, at the gainst surety for
the faithful ac-
counting of a
clerk, and to in-
demnif

parish of St Mary-le-bow, in the ward of Cheap, by his certain writing-obligatory, sealed with his seal, acknowledged himself to be held and firmly bound to the said Jenkin in his lifetime, in the sum of one hundred pounds, to be paid to the said Jenkin, his executors or administrators, when he the said defendant should be thereunto required; yet that the defendant, although often required, hath not paid to the said Jenkin in his lifetime, or to the said Sophia since his decease, the said one hundred pounds, but hath hitherto refused and doth still refuse to pay the same to the said plaintiff, wherefore the said that she is injured, and hath damage to the value of twenty pounds, and therefore she brings her suit; and she brings into court as well the aforesaid writing obligatory, which testifies the debt in form aforesaid, as also the letters testamentary of the said Jenkin, whereby it sufficiently appears that the said plaintiff is administratrix as aforesaid.

And the said defendant, by John Addison his attorney, comes and defends the wrong and injury, when, &c. and cravesoyer of the said writing-obligatory in the said declaration mentioned, and it is read to him in these words, to wit: "Know all men by these presents, that we Edward Halfhide, of Newington Butts, in the county of Surry, gentleman, and Thomas Hull, of Chiswell-street, in the parish of St. Luke, in the county of Middlesex, stable-keeper, are held and firmly bound to Jenkin Jones, of Old-street, in the said parish of St. Luke, in the county of Middlesex, distiller, in the sum of one hundred pounds of good and lawful money of Great Britain, to be paid to the said Jenkin Jones, or his certain attorney, executors, administrators, or assigns, for which payment to be well and faithfully made, we bind ourselves and each of us by himself, for and in the whole, our heirs, executors, administrators, and each of us, firmly by these presents, sealed with our seals, dated the eighteenth day of March, in the twentieth year of the reign of our sovereign lord George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. and in the year of Our Lord 1780?" He also cravesoyer of the condition of the said writing-obligatory, and it is read to him in these words, to wit: "Whereas the above, named Jenkin Jones, at the special instance and request of the above bound Edward Halfhide and Thomas Hull, contented and agreed to take into his service him the said Edward Halfhide, to be by him the said Jenkin Jones employed in the way of his business as a distiller which he now follows, in col-

(a) See Debt on Bond, ante p. 364. and Debt on Bastardy Bonds, ante.

lesting and receiving in his monies, and doing such other business as he shall be employed in by him the said J. J.; and whereas the said Thomas Hull hath undertaken as security for the fidelity of him the said E. H. in the service and employ of him the said J. J. for and during the time the said E. H. shall continue in such service and employ; now the condition of the above obligation is such, that if the said Edward H. do and shall at all times so long as he shall continue in the service and employ of him the said Jenkin Jones, well and truly and faithfully behave himself in such his service and employ in all matters wherewith he shall be entrusted, and do and shall from time to time and at all times account with and pay unto him the said J. J. or into his counting house, or any other place he may appoint, order, or direct, all such sum and sums of money as he shall from time to time receive of him the said J. J. or on his account, and do not damnify him in his credit, estate, and effects, then this obligation to be void, or else to be and remain in full force and virtue;

Non est factum.

2d Plea, that the clerk did faithfully account, &c. and did not damnify.

which being read and heard, he the said defendant says, that the said writing-obligatory in the said declaration mentioned is not the deed of him the said defendant in manner and form as the plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.: And for further plea in this behalf, he the said defendant, by leave of the court here for this purpose first had made and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiff ought not to have or maintain her aforesaid action thereof against him; because he says that the said E. H. did at all times so long as he continued in the service and employ of the said J. J. as in the said condition of the said writing-obligatory is mentioned, well and truly and faithfully behave himself in such his service and employ in all matters wherewith he was entrusted, and did from time to time and at all times account with and pay unto the said J. J. and into his counting-house, and into every other place he the said J. J. appointed, ordered, and directed, all such sum and sums of money as he the said E. H. did from time to time receive of the said J. J. or on his account, according to the form and effect of the said condition of the said writing-obligatory, to wit, at London aforesaid, in the parish and ward of Cordard, and did not damnify him the said J. J. in his credit, estate, or effects; and thus the said defendant is ready to verify; wherefore he prays judgment in the said plaintiff ought to have or maintain her aforesaid action thereof against him, &c.

JAMES C. BOLT N.

Replication, *scilicet* to first plea
2d, That from the making the bond until

And the said plaintiff, as to the said plea of the said defendant first above pleaded, and wherof he hath put himself upon the country, doth the like, &c.: And as to the said plea of the said defendant by him secondly above pleaded in bar, she says, that she ought not to be barred from having or maintaining her aforesaid action thereof against him; because she says that the said J. J. at the time of making the said writing-obligatory, and for a long space of time, to wit, continually from thenceforth until and upon the

the twenty-fourth day of June 1780 aforesaid, exercised and carried on, and continued to exercise and carry on the said business of a distiller in the said condition of the said writing obligatory mentioned, at and in the same house, counting-house, and premises where he exercised and carried on the same at the time of the making of the said writing-obligatory aforesaid, upon his own separate account, and that on the said twenty-fourth day of June 1781, *Benjamin Jones* entered and was admitted by the said J. J. into partnership with him the said J. J. in his said trade and business, and that the said trade and business was exercised and carried on by the said J. J. and B. J. as such partners together therein at and in such house, counting house, and premises as aforesaid, continually from thence for a long space of time, to wit, until and after the said E. H. quitted their service as hereafter mentioned; and the said Benjamin Jones upon such admission became possessed of and entitled as such partner to one half share or part of the said trade and business, and so continued during all the time last aforesaid: And plaintiff further says, that the said E. H. after the making of the said writing-obligatory, to wit, on the day of the date thereof, at London aforesaid, in the parish and ward aforesaid, entered and was received into the said service and employment of the said J. J. and continued in the said service of him the said J. J. from thence until and at the time when the said J. J. so took the said Benjamin Jones into partnership with him in his said trade and business as aforesaid, and continued in the same service and employment in the said trade and business so exercised and carried on by the said J. J. in partnership with the said B. J. as aforesaid, until afterwards, to wit, on the first day of October 1784, to wit, at London aforesaid, in the parish and ward aforesaid, and that the said E. H. was not from the time of the making the said writing-obligatory until the said first day of October 1784, and until after the breach of the said condition of the said writing-obligatory herein after mentioned, ever dismissed or discharged from his said service and employment in the aforesaid trade and business: And plaintiff in fact further says, that after the said J. J. had so taken the said B. J. into partnership as aforesaid, and while the said E. H. so continued in such his said service and employment as aforesaid, to wit, on the first day of September, in the year last aforesaid, at London aforesaid, in the parish and ward aforesaid, a large sum of money, to wit, the sum of five hundred and eighty-four pounds, eleven shillings and eight-pence halfpenny of and belonging to the said J. J. and B. J. as such partners together as aforesaid in the aforesaid trade and business of a distiller, being the balance of an account then and there stated and settled between the said J. J. and B. J. and the said E. H. of and concerning divers sums of money belonging to the said J. J. and B. J. as such partners as aforesaid in the aforesaid trade and business, before that time received by the said E. H. as such servant as aforesaid, in and under his aforesaid service and employment, on account of the said J. J. and B. J. had come into the hands of, and had been received

24th June 1781,
J. J. carried on
business on his
separate ac-
count, and then
took B. J. a
partner, and
that the trade
was carried on
by them as such
in same count-
ing-house until
1784, and E. H.
was continued
therein;

And that the said
E. H. had a balance
in his hands
of account of
the said J. J. and
B. J. of the said
sum of money
before the said
J. J. and B. J. had
received the same
from the said E. H.

by, and was then in the charge of the said E. H. as such servant of the said J. J. and B. J. as aforesaid, one half of which said sum of five hundred and eighty-four pounds eleven shillings and eightpence halfpenny, to wit, the sum of two hundred and ninety-two pounds six shillings and tenpence farthing was to be received by the said E. H. on account of the said J. J. deceased, in his lifetime, which said last-mentioned sum of money he the said E. H. afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, was required by the said J. J. to pay to him the said J. J.: Yet the said E. H. did not when he was to be required as aforesaid, pay unto him the said J. J. or into his counting-house, or any other place by him appointed, ordered, or directed, the said last-mentioned sum of money or any part thereof, either to the said J. J. in his lifetime, or to the said plaintiff, administratrix as aforesaid, since his death, nor to the said B. J. but he to pay the same hath hitherto wholly neglected and refused and still refuses, contrary to the tenor and effect of the condition of the said writing-obligatory; and thus the said plaintiff is ready to verify; wherefore she prays judgment and her debt aforesaid, together with her damages by her sustained on occasion of the detention thereof, to be adjudged to her.

JAMES ADAMS.

Rejoinder, that the principal did pay, &c.

And the said defendant, as to the said plea of the said plaintiff by her above pleaded in reply to the said plea of the said defendant by him secondly above pleaded in bar, says, that the said E. H. did pay to the said J. J. in his lifetime the said sum of money by the said replication supposed not to have been paid by the said E. H. to him the said J. J. according to the tenor and effect, intent and meaning of the said condition of the said writing-obligatory, to wit, at London aforesaid, in the parish and ward aforesaid; and of this he the said defendant puts himself upon the country.

The case of Wright and Russell, 3. Wils. 530 and 2. Blackf. 334, is strongly in favour of the bond in the present case being binding only by the taking of a capitulation; but the case of Bonney and Lucas, 1. Wils. 171 and 1. D. 289, is rather the other way; but then it was not exactly like the case of Wright and Russell and indeed the court acknowledged a distinction in the bond in that case, being to the benefit of the obligees (who were bankers), rather than to the partners in such bond, personally and individually; for the case of Wright

and Russell must be considered as not yet over-ruled, and consequently, not a final authority for the defendant in the present case, as the obligation is never is upon the bond, and may therefore be taken in advantage of hereafter as well as now, and as from the evidence stated, there is a chance of a verdict upon the issue in fact, so I could not concur in the replication, but take the chance of a trial, and then in case of failure I beg a writ of error, or move in arrest of judgment.

V. LAWES.

Plea of performance to an action against a surety, a bond of indemnity, and to account to the stewards of a charitable society for all money to be deposited in their subscription box lodged at the house of the principal.

AND the said James, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that the said

writing

writing-obligatory in the said declaration mentioned is not the deed of him the said defendant, in manner and form as the said plaintiffs have above thereof complained against him; and if this he puts himself upon the country, &c. And for further plea in this behalf he the said defendant, by leave of, &c. according to, &c. craves oyer of the said writing-obligatory, and it is read to him in these words, to wit: "Know all men by these presents that we T. N. of, &c. in, &c. and J. S. of, &c. in, &c. are held and firmly bound unto J. K. W. A. J. H. and J. A. the present acting masters and stewards of a certain society of mechanics who assemble together and meet at the house of the said T. N. for certain benevolent and charitable purposes, and their successors in the said office for the time being in the sum of one hundred pounds of lawful money of Great Britain, to be paid to the said J. K. W. A. J. H. and J. A. and their successors in the said office for the time being, or their certain attorney, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves and each of us, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated the twenty-fifth day of, &c. A. D. 184," he also craves oyer of the condition of the said writing-obligatory, and it is read to him in these words, to wit, &c. &c. [set out the condition of the bond]; which being read and heard, the defendant says, *alio non*; because he says, that after the making and entering into the said writing-obligatory by the said T. N. and J. S. (the defendant) to wit on, &c. at, &c. the said T. N. quitted the possession of the said house of the said T. N. in the condition of the said writing-obligatory mentioned, and then and there ceased to be occupier thereof, and the same then and there ceased to be the house of the said T. N. and was then and there, and from thenceforth hitherto hath been and still is occupied by another and different person than the said T. N. and the said society in the said condition mentioned then and there ceased to and did no longer assemble and meet at the house of the said T. N.: And the said defendant further says, that continually from time to time from the time of the making and entering into the said writing-obligatory till the said T. N. ceased to be the tenant of the said house in the said condition thereof mentioned as aforesaid, he the said T. N. duly answered and accounted for all monies and sums of money and securities, that then (that is to say, at the time of the making and entering into the said writing-obligatory) or at any time afterwards during his stay in the said house till his quitting the same, and till the said society ceased to assemble and meet at the house of the said T. N. were lodged and deposited in the said box belonging to the said society; and also that he the said T. N. during all the time last aforesaid, and as long as the said society assembled and met at the said house of the said T. N. duly answered and accounted for the said box in the said condition mentioned, according to the tenor and effect, true intent and meaning of the said condition of the said writing-obligatory; and

ist, Non est fac-
tum of the sure-
ty; ad, perfor-
mance of the
principal,

this,

that the
defendant lent the
principal (the
money out of the
box) against the
will of the sure-
ty, and that he
was duly accounted.

this, &c.; wherefore, &c. if, &c.: And for further plea in this behalf, he the said defendant, by like leave of, &c. according to, &c. says, *actio non*; because he says, that after the making and entering into the said writing-obligatory by the said T. N. and defendant, to wit, on, &c. at, &c. the said T. N. quitted the possession of the said house in the condition of the said writing-obligatory mentioned, and then and there ceased to be the occupier thereof, and the said house ceased to be the house of the said T. N. and was then and there, and from thence hitherto hath been, and still is occupied by another and different person than the said T. N. and the said society in the said condition mentioned then and there ceased to and did no longer assemble and meet at the house of the said T. N.: And the said defendant in last further says, that all the money during all or any part of the time aforesaid till the said society ceased to meet and assemble at the said house of the said T. N. came or was paid into or deposited into the said box in the said condition of the said writing-obligatory mentioned, amounted to the sum of one hundred pounds and no more, to wit, at, &c.; and that he the said T. N. before and at and after the time that the said society in the said condition of the said writing-obligatory mentioned, ceased to assemble and meet at the said house of the said T. N. as aforesaid, by the loan, and with the privity, leave, and licence of the said society to him for that purpose first given and granted, and without the leave or licence, and against the will of the said defendant, had and received, and kept and retained to his own use the sum of seventy-one pounds, part of the said sum of one hundred pounds; and that he the said defendant hath always, from the making and entering into the said writing-obligatory till the said society in the condition thereof mentioned ceased to assemble and meet at the house of the said T. N. as aforesaid, answered and accounted for the said box in the said condition thereof mentioned, and also for all money and sums of money and securities, that then (that is to say, at the time of the making and entering into the said writing-obligatory) or at any time afterwards during the time aforesaid were from time to time lodged and deposited in the said box belonging to the said society, according to the tenor and effect, true intent and meaning of the said condition, and in full performance thereof, to wit, at, &c., and this, &c. wherefore, &c. in, &c.: And for further plea in this behalf he the said defendant, by like leave of, &c. according, &c. says, *actio non*, because he says, that after the making and entering into the said writing-obligatory by the said T. N. and defendant, to wit, on, &c. at, &c. the said T. N. quitted, &c. and then and there ceased, &c. and the said society in said condition mentioned then and there ceased, &c. and that he the said defendant hath always, from the making and entering into the said writing-obligatory till the said society in the condition thereof mentioned ceased to assemble and meet at the house of the said T. N. as aforesaid, answered and accounted for the said box in the said condition thereof mentioned, and also

that surety
performed.

for all monies and sums of money and securities, that then (that is to say, &c.) or at any time afterwards were from time to time lodged and deposited in the said box belonging to the said society, according to the tenor and effect, true intent and meaning thereof, and in full performance thereof, to wit, at, &c.; and this, &c. wherefore, &c. if, &c.

T. BARROW.

And as to the said plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country. they the said plaintiffs do the like, &c.; and as to the said plea of the said defendant by him secondly above pleaded in bar, they the said plaintiffs say, that they ought not to be barred from having and maintaining their aforesaid action against him; because they say, that after the making and entering into the said writing-obligatory in the said declaration mentioned, and whilst the said society in the said condition mentioned assembled and met at the said house of the said T. N. in the said condition also mentioned, and whilst the said T. N. continued to be and was the occupier of such house, and whilst he was in the possession of and kept at his said house the said box in the said condition mentioned divers sums of money, amounting in the whole to a large sum, to wit, the sum of twenty-one pounds of lawful money of Great Britain, became and were lodged and deposited in the said box belonging to the said society, for the use and benefit of the said society, to wit, at, &c. in, &c. and that although afterwards and whilst the said society so assembled and met at the said house of the said T. N. and whilst the said T. N. so was the occupier of the said house, and whilst he was so in the possession and kept in his said house the said box in the said condition mentioned, to wit, on, &c. at, &c. the said T. N. was requested and required to answer and account for the said last-mentioned sum of money which had been so lodged and deposited in the said box belonging to the said society as aforesaid, according to the tenor and effect, true intent and meaning of the said condition of the said writing-obligatory; yet the said T. N. did not, nor would then and there, or at any other time whatsoever answer or account, nor hath as yet answered or accounted for the said last-mentioned sum of money, but he so to do then and there always from thence hitherto hath wholly refused and still refuses so to do, and on the contrary thereof hath retained and kept the same to his own use, nor hath the said defendant, although often requested, as yet answered or accounted for such money, but therein wholly failed and made default, contrary to the tenor and effect, true intent and meaning of the condition of the said writing-obligatory, to wit, at, &c.; and this, &c.; wherefore, &c. and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, &c. And as to the said plea of the said defendant by him thirdly above pleaded in bar, they the said plaintiffs say, that they ought not to be barred from having

Replication taking issue on the 1st plea; assigning a particular breach on the 2d; denying the leave stated in the 3d.

3d, concluding the country, assigning a particular

and

upon the 4th;
which, as well
as the 2d, con-
cludes with a
verification (a).

and maintaining their aforesaid action against him; because they say, that the said T. N. had and received, and kept and retained to his own use the said sum of seventy-one pounds in the said third plea mentioned of his own wrong, and not by the loan, and with the privity, leave, and licence of the said society to him for that purpose first given and granted in manner and form as the said defendant hath above in his said third plea in that behalf alledged; and this they the said plaintiffs pray may be enquired of by the country, &c.: And as to the said plea of the said defendant by him fourthly above pleaded in bar, they the said plaintiffs say, that they ought not to be barred from having and maintaining their aforesaid action against him; because they say, that after the making and entering into the said writing-obligatory in the said declaration mentioned, and whilst the said society in the said condition mentioned assembled and met at the said house of the said T. N. in the said condition also mentioned, and whilst the said T. N. continued to be and was the occupier of such house, and whilst he was in possession of and kept at his said house the said box in the said condition mentioned, divers sums of money, amounting in the whole to a large sum, to wit, the sum of seventy-one pounds of lawful money of Great Britain, became and were lodged and deposited in the said box belonging to the said society, for the use and benefit of the said society, to wit, at, &c.; and that although afterwards and whilst the said society so assembled and met at the said house of the said T. N. and whilst the said T. N. so was the occupier of such house, and whilst he was so in possession of and kept at his said house the said box in the said condition mentioned, to wit, on, &c. at, &c. the said defendant was requested and required to answer and account for the said last-mentioned sum of money which had been so lodged and deposited in the box belonging to the said society as aforesaid, according to the tenor and effect, true intent and meaning of the said condition of the said writing-obligatory; yet he the said defendant did not, nor would then and there, or at any other time whatsoever account or answer for, nor hath he as yet answered or accounted for the said last-mentioned sum of money, but he so to do then and there, and always from thence hitherto hath always refused and still refuses so to do, nor hath he the said T. N. although often requested, as yet answered and accounted for such sum of money, but hath therein wholly failed and made default, contrary to the tenor and effect, true intent and meaning of the said condition of the said writing-obligatory; and this, &c.; wherefore, &c. and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, &c.

V. LAWES.

(a) But query, Whether the 2d and 4th might not have been concluded to the country. Mr. LAWES, who drew the re-

plication, thought it might. See *Fletcher v. Hennington*, 2 Burr. 944. *Tilpaud v. Mercur*, 2 Burr. 1022.

And

And the said James, as to the said plea of the said plaintiffs by them above pleaded by way of reply to the said plea of the said James by him secondly above pleaded in bar, says, that the said plaintiffs ought not, by reason of any thing in their said replication alledged, to have or maintain their aforesaid action thereof against the said defendant; because he the said defendant says, that the said T. N. did answer and account for the said sum of money in the said replication mentioned to have been lodged and deposited in the said box belonging to the said society, according to the tenor and effect, true intent and meaning of the said condition of the said writing-obligatory; and of this he the said defendant puts himself upon the country, &c.: And as to the said plea of the said plaintiffs by them above pleaded by way of reply to the said plea of the said defendant by him thirdly above pleaded in bar, and whereof they the said defendants have above put themselves upon the country, the said defendant doth the like, &c.: And the said defendant, as to the said plea of the said plaintiffs by them above pleaded by way of reply to the said plea of the said defendant by him fourthly above pleaded in bar, says, that the said plaintiffs ought not, by reason of any thing by them in their said replication alledged, to have or maintain their said action against him the said defendant; because he says, that he the said defendant did answer and account for the said sum of money in the said last-mentioned replication mentioned to have been so lodged and deposited in the said box belonging to the said society, according to the tenor and effect, true intent and meaning of the said condition of the said writing-obligatory; and of this he the said defendant puts himself upon the country, &c.

T. BARROW.

Verdict for defendant.

AND the said M. H. by W. B. her attorney, comes and defends the wrong and injury, when, &c. and craves oyer of the said writing-obligatory in the said declaration mentioned, and it is read to her in these words, to wit (here copy the bond *verbatim*); she also craves oyer of the condition of the said writing-obligatory, and it is read to him in these words, to wit (here copy the condition of the bond, which in the present case recited that sir W. M. had appointed one G. C. to be his rent gatherer, and was that the said G. C. should behave himself honestly in that office, and from time to time account with the said sir W. M. and pay him all monies he should receive as such rent-gatherer); which being read and heard, the said M. saith that the said plaintiffs, executors as aforesaid, *actio non*; because she saith, that the said G. C. did from time to time, and at all times so long as he remained and continued in the said office or employment of receiver of the aforesaid rents in the said condition of the said writing-obligatory mentioned, well and truly observe, perform, fulfil, accomplish, pay, and keep all and singular the articles, clauses, payments,

Rejoinder to the last replication, taking issue upon the replications to the 2d and 4th pleas, and joining issue upon the replication to the 3d

Plea, oyer of the bond and the condition which was given for the good behaviour of one A. B. in the service of the plaintiff's testator, that A. B. did behave well and account for all monies he received.

payments, conditions, and agreements in the said condition of the said writing-obligatory specified, comprised, or mentioned in all things, according to the tenor, true intent and meaning of the said condition of the said writing-obligatory; and this, &c.; wherefore, &c. if, &c.

Replication, that
A. B. received a
sum of money,
and did not ac-
count.

And the said lord viscount M. &c. say, that they, by reason of any thing by the said M. above in pleading alledged, *precludi non*; because they say, that the said G. C. during the said time that he the said G. C. remained and continued in the said office or employment of receiver of the aforesaid rents in the said condition mentioned, to wit, on, &c. at, &c. had and received a large sum of money, to wit, the sum of pounds of and from one A. B. tenant of one of the said messuages of the said sir W. M. situate and being in the parish of, &c. being one of the said messuages mentioned in the said condition for the rent of the said messuage before then being due, in arrear, and payable from the said A. B. as such tenant of the said messuage to the said sir W. M. in his lifetime; yet the said G. C. although often requested, hath not yet paid the same, or any part thereof, either to the said Sir W. M. in his lifetime, or to the said plaintiffs, executors as aforesaid, since the death of the said sir W. M. or to any or either of them, but hath therein wholly failed and made default; and the said sum of money so by the said G. C. received as aforesaid is still wholly unpaid either to the said sir W. M. in his lifetime, or to his said executors, or any of them since his death, contrary to the form and effect of the said condition of the said writing-obligatory; and this, &c.; wherefore they pray judgment of their debt aforesaid, together with their damages by reason of the detention thereof, to be adjudged to them, &c.

Rejoinder, ad-
mitting that he
received the mo-
ney, and that he
accounted for
the same with
the plaintiffs.

And the said M. H. as to the said plea of the said plaintiffs by them above pleaded, in reply to the said plea of the said M. H. by her above pleaded in bar, says, that the said plaintiffs, by reason of any thing in their said plea so pleaded in reply contained, *assio non*; because she saith, that though true it is that the said G. C. during the said time that he the said G. C. remained and continued in the said office or employment of receiver of the aforesaid rents in the said condition mentioned, had and received the said sum of, &c. in the said replication mentioned, as the said plaintiffs have in their said plea by them above pleaded in reply in that behalf alledged; yet protesting that the said plea of the said plaintiffs by them above pleaded in reply to the said plea of the said M. H. by her above pleaded in bar, and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law for the said plaintiffs to have their aforesaid action thereof maintained against the said M.; for rejoinder in this behalf the said M. saith, that the said G. C. after the making of the said writing-obligatory, and after he the said G. C. had received the said sum of pounds as aforesaid, and before the exhibiting, &c. to wit, on, &c. died, and that the said

SURREJOINDER—DEMURRER TO SURREJOINDER.

said R. B. in the said writing-obligatory mentioned, after the respective deaths of the said G. C. and the said fir W. M. in the said writing-obligatory mentioned, and before the exhibiting, &c. to wit, on, &c. well and truly paid to the said plaintiffs, as executors of the said fir W. M. deceased, the said sum of pounds to received by the said G. C. as aforesaid; and this, &c. wherefore, &c.

And the said lord viscount M. &c. as to the said plea of the said M. by her above pleaded by way of rejoinder to the said plea of the said plaintiffs by them above pleaded in reply, say, that by reason of any thing by the said M. in that plea above alledged *precludi non*; because they say, that the said R. B. after the respective deaths of the said G. C. and of the said fir W. M. in the said writing-obligatory mentioned, and before the exhibiting, &c. did not pay to the said plaintiffs, as executors of the said fir W. M. deceased, or to any of them, the said sum of pounds to received by the said G. C. as aforesaid, as the said M. hath in and by her said rejoinder above alledged; and this they pray may be enquired of by the country, &c.

For that the said lord viscount M. &c. have attempted in and by their surrejoinder aforesaid to put in issue a matter wholly immaterial, inasmuch as they have in and by their surrejoinder aforesaid pleaded that the aforesaid R. B. did not pay them, as executors of the said fir W. M. deceased, the said sum of money in the said rejoinder of the said M. specified, when by law they ought to have pleaded generally that the same was not paid to them or either of them, and not to have taken issue that the same was not paid to them as executors, and for that they have concluded by their surrejoinder to the country, when by law they ought to have concluded the same with a verification; and for that it does not appear in or by the said surrejoinder but that some part of the said sum of pounds was paid by the said R. B. to them or some or one of them; and for that the surrejoinder aforesaid is in many other respects uncertain, insufficient, and informal, &c.

The plaintiffs joined in demurrer, which postponed the cause till Michaelmas term following, when the plaintiffs had judgment for their debt and eighteen pounds costs: after the giving, and before the execution of this judgment, M. H. the defendant died, having first made a will and appointed executors. Lord M. and Sir T. A. also died, and afterwards the surviving co-plaintiffs proceeded by *scire facit* against M. H.'s executors, who appeared and pleaded a false plea to gain time, upon which issue was

joined, and the plaintiffs had judgment for the debt and damages recovered in the original action, and twenty-five pounds increased costs. It is to be observed that Mrs. H.'s executors were no legal representatives of R. H. to whom their testatrix was administratrix, in which character the original action was prosecuted against her, and therefore not liable to the judgment against her in that character, for which they afterwards brought a writ of error on the judgment obtained against them.

MIDDLESEX,

Debt on bond,
obligees against
obligor, by ori-
ginal in K. B.
with conditi-
on to indem-
nify the sheriff
of Middlesex in
returning *nulla*
bona after seiz-
ing on *fieri fa-*
cias against de-
fendant.

MIDDLESFX, to wit. Sir Ralph Verney, late of West-
minster, in the county of Middlesex, baronet, earl Verney in the
kingdom of Ireland, was summoned to answer Thomas Wright,
esquire, and Evan Pugh, esquire, late sheriff of the county of
Middlesex, of a plea that he render to them the said plaintiffs three
thousand pounds of lawful money of Great Britain, which he owes
to and unjustly detains from them, &c. and whereupon said plain-
tiffs, by Samuel Toulmin, their attorney, say, that whereas said
defendant on the twenty-second day of November, A. D. 1779,
of Westminster aforesaid, by his certain writing-obligatory, sealed
with the seal of him the said defendant, and to the court of our
said lord the king now here shewn, the date whereof is the same
day and year above mentioned, acknowledged himself to be held
and firmly bound to the said plaintiffs in the said sum of three
thousand pounds, to be paid to the said sheriff, or his certain at-
torney, executors, administrators, or assigns, when he the said
defendant should be thereunto required; yet the said defendant,
although often requested, hath not rendered the said three thou-
sand pounds, or any part thereof, to the said plaintiffs, or to ei-
ther of them; but hath hitherto altogether refused, and still doth
refuse to answer the same to them, or to either of them, where-
upon the said plaintiffs say they are injured, and have sustained
damage to the amount of twenty pounds; and therefore they bring
suit, &c.

Plea of non dam-
nificatus.

Imprudence.

LORD VERNEY } And the said Ralph, by Robert Hughes,
at suit of } his attorney, comes and defends the
WRIGHT, ESQUIRE, } wrong and injury, when, &c. and prays
AND ANOTHER. } leave to imparl to the said declaration, and
it is granted him, &c. and thereupon a day is given to the said
parties to come before our lord the king in eight days of St.
Hilary, wheresoever our said lord the king shall then be in Eng-
land, at which day before our lord the king, at Westminster,
comes the parties aforesaid, by their attorney aforesaid, and the
said sir Ralph as before defends the wrong and injury, when, &c.
and prays oyer of the said writing-obligatory in the said declaration
mentioned, and it is read to him in these words, to wit: Know
all men, &c. he also prays oyer of the condition of the said writ-
ing-obligatory, and it is read to him in these words, to wit:
“Whereas the above named Thomas Wright, esquire, and Evan
Pugh, esquire, sheriff of the city of Westminster, by virtue of
his majesty’s writ of *fieri facias* to him directed, against the goods
and chattels of the above bounden sir Ralph Verney, returnable
before his majesty, at Westminster, on Saturday next after the
morrow of All Souls now last past, at the suit of William Burk,
esquire, and Christopher Hargrave, esquire, for three thousand
one hundred and ninety-seven pounds ten shillings debt, and sixty-
three shillings damages, on which said writ is indorsed a direction
to the said sheriff to levy one thousand two hundred and nineteen
pounds three shillings and sixpence, and interest at five per cent.

Oyer of bond
and condition.

on nine hundred and ninety-eight pounds fifteen shillings from the twenty-seventh day of September 1779, besides the said poundage, bailiffs fees, and all other incidental charges attending the levy, hath seized and taken in execution of the goods and chattels of the said sir Ralph Verney, in the bailiwick of the said sheriff, divers goods and chattels to the amount in value of the money so directed to be levied by virtue of the said writ: And whereas the said sheriff, at the special instance and request of the said sir Ralph Verney, and of the above bounden Oliver Toulmin and James Christy, hath quitted the possession of the said goods and chattels so by him seized and taken in execution as aforesaid, and hath agreed to return the said writ of *feri facias*, that the said Ralph Verney hath not any goods or chattels in the bailiwick of the said sheriff whereof he can cause to be made the debt and damages in the said writ mentioned, or any part thereof, they the said Ralph Verney, Oliver Toulmin, and James Christy having agreed to indemnify the said sheriff for so doing, the condition therefore of this obligation is such, that if the said sir Ralph Verney, Oliver Toulmin, and James Christy, or any of them, their or any of their executors or administrators, do and shall at all times hereafter well and sufficiently give, defend, keep harmless, and indemnified the said T. W. and E. P. and each of them, their and each of their executors and administrators, of, from, and against all costs, charges, damages, and expences which they or either of them shall or may at any time hereafter pay, sustain, or suffer, or be put unto for or by reason or means of the quitting the possession of the said goods and chattels, or of returning the said writ of *feri facias* in manner above mentioned, then this obligation to be void, or else to remain in full force, which being read and heard, the said sir Ralph says, that said plaintiff's *actio non*; because he says, that the said Thomas Wright and Evan Pugh have not, nor hath either of them at any time since the making of the said writing-obligatory, and the aforesaid condition thereof, been in any manner whatsoever damaged for or by reason or means of the quitting the possession of the said goods and chattels in said condition of the said writing-obligatory mentioned, or of returning the said writ of *feri facias*, in the said condition also mentioned, in manner in the said condition mentioned; and this he, said defendant, is ready to verify; wherefore he prays judgment if said plaintiff's ought to have or maintain their aforesaid action against him, &c.

<p>WRIGHT, ESQUIRE, AND ANOTHER, against LORD VERNEY.</p>	<p>} And the said plaintiffs, as to the said</p>	<p>Replicatio plea of the said defendant by him above setting pleaded in bar, say, that they the said plaintiffs da- plaintiffs ought not by reason of any mage specially, and that de- thing in that plea alledged, be barred from having and main- taining their aforesaid action against him, because they say, that not indemnified after the making of the said writing-obligatory in the said de- claration mentioned, and the aforesaid condition thereof, and VOL. V. M m whilst</p>
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whilst the said plaintiffs were such sheriff of the said county of Middlesex as aforesaid, and before the issuing forth of the original writ of them the said plaintiffs against the said defendant, they the said plaintiffs in pursuance and performance of the said agreement in the said condition of the said writing-obligatory mentioned, and as such sheriff of the said county of Middlesex as aforesaid, did return upon the said writ of *feri facias* in the said condition mentioned, that the said sir R. V. had not any goods or chattels in the bailiwick of them the said plaintiffs as such sheriff of the said county of Middlesex as aforesaid, whereof they could cause to be made the debt and damages in the said writ in the said condition mentioned of the said writing-obligatory, or any part thereof, according to the tenor and effect of the said agreement in the said condition mentioned, to wit, at Westminster aforesaid; and the said plaintiffs further say, that by reason and means of their returning, and of their having returned the said writ of *feri facias* in the said condition of the said writing-obligatory mentioned in manner in the said condition, and herein before mentioned, *they the said plaintiffs were afterwards*, to wit, on the nineteenth day of July, in A. D. 1782, at Westminster aforesaid, *forced and obliged to, and they did then and there pay to and to the use of the said William Burk and Christopher Hargrave, at whose suit the said writ of *feri facias*, in the said condition of the said writing-obligatory mentioned issued as aforesaid, a large sum of money, to wit, the sum of one thousand four hundred and eighty-four pounds (a) of lawful money of Great Britain, and that on that occasion and by reason and means of such payment, they the said plaintiffs did then and there, that is to say, on the day and year last aforesaid, at Westminster aforesaid, sustain and suffer a damage by reason and means of their returning, and of their having returned the said writ of *feri facias*, in the said condition of the said writing-obligatory mentioned in manner of the said condition, and herein before mentioned, to a certain amount, to wit, to the amount of one thousand four hundred and eighty-four pounds of like lawful money of Great Britain, whereof the said defendant, and the said Oliver Toulmin, and James Christy, in the said condition of the said writing-obligatory mentioned, afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, had notice: And the said plaintiffs in fact further say, that the said defendants, Oliver Toulmin, and James Christy have not, nor hath any or either of them at any time whatsoever, hitherto indemnified them the said plaintiffs, or either of them, from or against the said damage so by them sustained and suffered by reason and means of their returning, and of their having returned the said writ of *feri facias*, in the said condition of the said writing-obligatory mentioned in manner in the said condition, and herein before-mentioned as aforesaid, or*

(a) That the general allegation is sufficient, without showing how plaintiff was obliged to pay, was determined in

the case of *Simons v. Langhorn*, 2. Wills, 11.

from or against any part thereof, according to the tenor and effect of the said condition of the said writing-obligatory; but have and each of them hath hitherto wholly neglected and refused so to do, contrary to the tenor and effect of the said condition in the said writing-obligatory, to wit, at Westminster aforesaid, and this they the said plaintiffs are ready to verify, wherefore they pray judgment and their debt aforesaid, together with their damages on occasion of the detention thereof to be adjudged to them, &c.

C. RUNNINGTON.

LORD VERNEY
at suit of
WRIGHT, ESQUIRE,
AND ANOTHER.

And the said defendant, as to the said plea of the said plaintiffs, by them above pleaded by way of reply to the said plea of said defendant by him above pleaded in bar, says, that notwithstanding any thing by the said plaintiffs in that plea alledged, they ought not to have or maintain their aforesaid action against him, because protesting that the said plea so pleaded in reply, and the matters therein contained in manner and form as the same are above pleaded and set forth, are insufficient in law for rejoinder in this behalf; he the said defendant says, that the said plaintiffs did not, nor did either of them sustain or suffer the said damage in the said replication mentioned, or any other damage whatsoever by reason or means of their returning, or of their having returned the said writ of *sub fine*, in the said condition of the said writing-obligatory mentioned, in manner in the said condition and replication mentioned, and of only he put himself upon the country, &c. and the said plaintiffs do the like, &c. therefore the sheriff is commanded that he come to come before our lord the king, on which recover our lord the king shall then be in England, twelve &c. by whom, &c. and whomever, &c. to recognize, &c. because as well, &c. the same day is given to the said party to be there, &c.

Rejoinder, taking issue of plaintiffs having sustained damage.

V. nire.

V. LAWES.

DACRE AND ANOTHER
at suit of
JAMES SHORT.

AND the said defendant in his proper person comes and defends the wrong and injury, when, &c. and prays the hearing of the said writing-obligatory, and it is read to him in these words, that is to say, whereas the above named James Short, at the request and for the debt of the above bound William Dacre, is together with the said William Dacre by one bond or obligation, bearing date the twenty-eighth day of June last, become bound to Thomas Fox, of the parish of St. Olave, Surry, brewer, in the penalty of seventy pounds, conditioned to be void on the payment of the sum of thirty-five pounds, and interest, at the several days in the condition of the said obligation mentioned, as by the same condition and obligation may appear: And whereas the said James Short hath this day advanced and lent to the said William Dacre the sum of nine pounds; now the con-

Plea of payment of money and indemnity of plaintiff to debt on bond to plaintiff to pay several debts for which plaintiff was jointly bound with and for defendant, and to indemnify plaintiff.

dition of this obligation is such, that if the said William Dacre his heirs, executors, and administrators, do and shall well and truly pay or cause to be paid to the said James Short, his executors, administrators, or assigns, the said sum of nine pounds, together with interest for the same, on the sixth day of July, which shall be in the year of Our Lord 1737, and also if the said W. D. his heirs, executors, and administrators, do and shall from time to time well and truly pay, or cause to be paid to the said Thomas Fox, his executors, administrators, or assigns, the said sum of thirty-five pounds, according to the condition of the said recited obligation, and in discharge thereof, and also do from time to time and at all times hereafter save harmless and keep indemnified the said James Short, his heirs, executors, and administrators, and his, and their, and every of their lands, tenements, hereditaments, goods, and chattels of and from the payment of the said sum of thirty five pounds, and every part thereof, and of and from all action and actions, costs, charges, damages, and expences which he or they shall any ways sustain or be put unto for and in respect of his entering into the said recited obligation, or any matter or thing relating therunto, then the above-written obligation to be void and every effect; but if default shall be made either in payment of the said nine pounds, or in the payment of the said sum of thirty five pounds, contrary to the condition of the said recited obligation, then the above obligation to be in full force and effect: which being read and heard, the said defendant says, that the said plaintiff ought not to have or maintain his said action for the same against him; because he says, that the said defendant, after the making of the said writing obligatory brought here into court, and after the said sixth day of July, A. D. 1737, in the said condition above-mentioned, to wit, on the first of December 1737, at the parish of, &c. aforesaid, paid to the said plaintiff the sum of nine pounds in the said condition mentioned, and all interest then due for the same, and also that he the said defendant, always from and after the making of the said bond or obligation recited in the said condition until the day of exhibiting of the said bill of the said plaintiff against the said defendant, hath well and truly paid unto the said Thomas Fox all and every such part of the said thirty-five pounds mentioned and contained in the said condition of the said recited bond or obligation as have hitherto become due and payable to the said Thomas Fox by virtue of the said recited bond and obligation to be made and entered into by the said defendant and plaintiff to the said Thomas Fox, at the several days and times appointed for the payment thereof, according to the form and effect of the said condition, and that he the said defendant hath thereby from time to time, and at all times after making the said writing-obligatory brought here into court, hitherto, at the parish aforesaid, *saved harmless and kept indemnified* the said plaintiff of and from the payment of the said thirty five pounds, and every part thereof, and that he the said plaintiff *hath never yet been any way damaged by reason of, for, or in respect of his entering into the said obligation*

tion in the said condition of the said writing-obligatory brought here into court above recited; and this he is ready to verify; wherefore he prays judgment whether the said plaintiff ought to have or maintain his said action thereof against him, &c.

And the said plaintiff saith, that he by any thing before alledged ought not to be barred from having his said action against the said defendant; because he saith that the said defendant did not pay to the said plaintiff the said sum of nine pounds in the said condition mentioned, and all interest then due for the same, in manner and form as the said defendant hath above in pleading alledged; and this he prays may be enquired of by the country; and the said defendant doth so likewise; therefore, &c.

Replication thereto, shewing that defendant did not pay one of the debts mentioned in the condition of the bond declared on, and concluding to the country.

AND the said Edward W. by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays oyer of the said writing, and it is read to him, &c.; he also prays oyer of the condition of the said writing, and it is read to him in these words, to wit: "Whereas the above bounden E. W. and the above named J. P. did, on or about the eighteenth day of April 1751, enter into an agreement with Thomas C. of London, merchant, to accept of a lease for twenty-one years, to commence from Michaelmas then next, at the rent of seventy-five pounds a year, clear of land-tax and all other taxes, of a messuage and office then intended to be and since erected on a certain piece of ground in Exchange Alley in the said agreement particularly mentioned, and which has since been entered upon and occupied by the said Edward W. and J. P.; and whereas the said Edward and J. P. were then co-partners in the business of attorneys and solicitors, and have agreed that the same shall be dissolved on the twenty-eighth day of May now next ensuing; and the said Edward W. by the said agreement is to have the said house in Exchange Alley; now the condition of this obligation is such, that if the said E. W. his heirs, executors, or administrators, do and shall well and sufficiently indemnify and save harmless the said J. P. his heirs, executors, and administrators, of and from all costs, charges, and expences that he or they may be put unto on account of entering into the said agreement; and also if the said E. W. his heirs, executors, and administrators, do and shall when the said intended lease shall be executed by the said T. C. his heirs, executors, administrators, or assigns, well and truly pay the rent in and by the said lease reserved, and which shall accrue from and after the said twenty-eighth day of May, and perform, observe, fulfil, and keep all the covenants, clauses, articles, and agreements in the said intended lease to be contained, which on the tenant's or lessee's part and behalf are and ought to be paid, performed, fulfilled, and kept, then this obligation to be void, otherwise to be and remain in full force and virtue;" which being read and heard, the said E. W. says, that the said J. P. ought not to have his action against him;

Plea of non dam-nificatus to debt on indemnity bond.

because he the said E. W. says, that the said J. P. from the time of the making the said writing to the day of exhibiting the bill of the said Joseph in this behalf, *was not damaged* by reason of any thing in the said condition of the said writing mentioned; and thus the said Edward is ready to verify; wherefore he prays judgment if the said J. P. ought to have or maintain his action aforesaid against him the said Edward, &c.

Replication,
showing a special damage.
A bill filed in chancery against plaintiff, and answer put in on account of entering into an agreement mentioned in the condition of the bond.

And the said Joseph saith, that he ought not by any thing above alleged by the said Edward in his plea aforesaid to be barred from having and maintaining his aforesaid action against the said Edward; because he saith, that after the making of the said writing-obligatory, and before the exhibiting of the aforesaid bill of the said Joseph, to wit, on the twenty-seventh day of February, A. D. 1754, the said T. C. in the aforesaid condition of the said writing-obligatory named, did in due manner file and exhibit his bill in his majesty's high court of chancery, then being at Westminster, in the county of Middlesex, against him the said Joseph, on account of his entering into the said agreement in that condition mentioned with the said T. C. that is to say, to compel the said Joseph to perform the said agreement in the said condition mentioned, so entered into with the said T. C. as aforesaid, in which said bill he the said Thomas C. did then, amongst other things, set forth, that he the said T. C. being entitled to and possessed of a certain piece of ground situate in Exchange Alley, London, which the said T. C. held under a lease granted to him by James H. the only surviving devisee in trust of the real estate of John H. and B. B. the elder, and F. B. for seventy-one years, commencing from the twenty-fifth of September 1750, wherein had since been erected a messuage and offices, with the appurtenances, and that the said Edward W. and the said Joseph, then defendant, being desirous to take a lease of the premises for twenty-one years, put of the said term of seventy-one years, as soon as the same should be built, the said Edward and Joseph after several meetings held for that purpose came to an agreement for themselves, their executors, administrators, and assigns with the said T. C. his executors, administrators, and assigns, about the eighteenth of April 1751, for the absolute taking of a lease of the said premises for twenty-one years then next, at twenty-five pounds a year clear of all land-tax and all other taxes, which said agreement was reduced into writing, and duly signed by the said T. C. and the said Edward and Joseph; and the said T. C. did in and by his said bill further set forth, that he the said T. C. had been at a considerable expence in erecting the said messuage and premises, in confidence of the said agreement, and that the said Edward and Joseph entered upon and occupied the same, and that the said T. C. had performed his part of the said agreement, and had caused a lease of the premises to be drawn for the said term of twenty-one years, with the usual covenants, which the said T. C. had duly executed, and also a counterpart which had been duly signed, sealed, and delivered by the said Edward,

Edward, which said counterpart had been tendered to the said Joseph to be executed, and that the said T. C. had frequently by himself and agents, both before and since such tender, applied to the said Joseph in a friendly manner and requested him to execute the said lease, but that he refused so to do; and the said T. C. did in and by his said bill pray, that the said Joseph might perform the said agreement and execute the said lease for the remainder of the said term of twenty one years then to come to the said T. C. according to the true intent and meaning of the said agreement, as by the said bill now remaining filed of record in the said court of chancery, at Westminster aforesaid, amongst other things, more fully appears: And the said Joseph further saith, that such proceedings were thereupon had in that suit in the said high court of chancery that he the said Joseph afterwards, to wit, on the fifth of July, A. D. 1754, was compelled and obliged to put in his answer to the same bill in that court, and did accordingly, on the day and year last aforesaid, in due manner put in his answer to the same bill in the said high court of chancery, to wit, at L. aforesaid, in the parish and ward aforesaid: And the said Joseph further saith, that he the said Joseph hath been put to and sustained great costs, charges, and expences by the aforesaid suit in the said court of chancery, so commenced and prosecuted by the said T. C. against him the said Joseph, by reason and on account of his entering into the said agreement as aforesaid, and hath thereby been obliged to lay out and expend, and hath actually laid out and expended on that occasion a large sum of money, to wit, the sum of fifty pounds four shillings and twopence for and on account of the said costs, charges, and expences, that is to say, at L. aforesaid, in the parish and ward aforesaid, whereof the said Edward afterwards, to wit, on the eighteenth day of May, A. D. 1758, in L. aforesaid, in the parish and ward aforesaid, had notice, and was then and there requested to pay and reimburse to the said Joseph the said sum of money and to indemnify him from the costs and charges aforesaid, but the said Edward then and there wholly refused to do, or in manner to indemnify the said Joseph against the said suit, or against the said costs, charges, and expences so sustained by him as aforesaid; and so the said Joseph saith that *he is greatly damaged* by reason and on account of his entering into the agreement aforesaid with the said T. C. in the said condition mentioned; and this the said Joseph is ready to verify; wherefore he prays judgment and his debt aforesaid, together with his damages by occasion of the detaining thereof to be adjudged to him, &c.

J. YATES.

And the said Edward W. says, that the said replication of the said Joseph in manner and form as the same is above made, and the matters therein contained, are insufficient in law to enable the said Joseph to have or maintain his said action against the said Edward, to which same replication the said Edward is under no necessity, nor is he in any ways bound by the law of the land to

answer; and this the said Edward is ready to verify; wherefore for want of a sufficient replication in this behalf the said Edward prays judgment, and that the said Joseph may be barred from having his said action against him.

W. H. ASHURST.

Declaration in
debt on bond, ob-
ligees against
obligor, the wife
of defendant.

LANCASHIRE, to wit. R. T. J. P. and E. C. complain of J. G. and Betty his wife, being, &c. of a plea that the said J. G. and Betty his wife render to the said plaintiffs three thousand four hundred pounds of, &c. which they the said defendants owe to and unjustly detain from them the said plaintiffs; for that whereas the said Betty whilst she was sole and unmarried, by her then name of Myers, on, &c. at, &c. in, &c. by her certain writing-obligatory sealed with the seal of her the said Betty, and to the court, &c. acknowledged herself to be held and firmly bound to the said plaintiffs, by the names, &c. in the sum of three thousand four hundred pounds to be paid to the said plaintiffs when the said Betty should be thereto afterwards requested; yet the said Betty, whilst she was so sole and unmarried, and the said defendants, since their intermarriage of them the said defendants, although often requested, have not, nor hath either of them yet paid the said sum of three thousand four hundred pounds to the said plaintiffs, but to pay the same to the said plaintiffs, or any of them, the said Betty, whilst she was sole and unmarried, and the said J. G. and Betty his wife since their intermarriage have, and each of them hath hitherto wholly refused, and still do refuse, to the damage, &c.

Plea to the last
declaration (oyer
and bond and
condition, which
was, that plain-
tiffs had bought
for one A. B.
living abroad, a
ship, and the ob-
ligor in the bond
sworn that if
A. B. did not
pay plaintiffs for
the ship and
their expenses,
they would
that before the
making of the
bond it was ag-
reed between
plaintiffs and
A. B. that they
should send him a ship and cargo, for which he would pay them, and that the obligor afterwards executed the bond for the performance of the agreement for A. B.

AND the said defendants, by A. B. their attorney, come and defend the wrong and injury, when, &c. and crave oyer of the said writing-obligatory, and it is read to them, &c.; they also crave oyer of the condition of the said writing-obligatory, and it is read to them in these words, to wit, "The condition of this obligation is such, that whereas the above-named Messrs. R. T. &c. have purchased a vessel and cargo of goods to the amount of about one thousand seven hundred pounds of British money, be the same more or less, as will appear by the bill of sale of the said vessel and invoice of the said cargo, on account and at the request of John Myers, gentleman, now residing at James's Fort, Gambia River, and brother to the above named Betty; now if the said John Myers do not pay, or cause to be paid to the said Messrs. R. T. and Co. the above sum of one thousand seven hundred pounds, with such interest and commissions as shall appear due to them, then she the said Betty doth hereby promise and undertake to pay to the said Messrs. R. T. &c. or one of them, the whole or such part of the above sum as they shall make appear to

have

have been laid out on the above account, and of which they have not received the value in money or goods, and if so, then this obligation to be void, otherwise to be and remain in full force;" which being read and heard, the said defendants say *ad id non*; because they say, that before the making of the said writing-obligatory, to wit, on, &c. at, &c. it was agreed between the said plaintiffs of the one part, and the said John Myers in the consideration mentioned on the other part, that the said plaintiffs should procure for the use of the said J. M. a vessel and cargo of goods to the amount of about one thousand five hundred pounds, British money, and should send the said vessel and cargo from England to the said J. M. at James's Fort, Gambia River, Africa, where the said J. M. resided, and the said J. M. in return for the same should pay, or cause to be paid to the said plaintiffs the said amount of the said cargo and vessel, with such interest and commission as should appear to be due to them for the same, either in money or goods: And the said defendants further say, that after the making of the said agreement, to wit, on, &c. at, &c. the said Betty executed the said writing-obligatory, with the condition thereof, for securing the performance of the said agreement on the part and behalf of the said J. M. according to the form and effect of the said agreement: And the said defendants further say, that the said plaintiffs never did send the vessel or cargo of goods to the said J. M. according to the form and effect of the said agreement; and this, &c.; wherefore, &c.: And the said writing-obligatory being read and heard, the said defendants for further plea, &c. *ad id non*; because they say, that before the making of the said writing-obligatory, to wit, on, &c. it was agreed between the said plaintiffs of the one part, and the said J. M. in the condition named on the other part, that the said plaintiffs should procure for the said J. M. a vessel and cargo of goods to the amount of about one thousand seven hundred pounds of British money, and should send the same from England to the said J. M. at James's Fort, Gambia River, Africa, where the said J. M. resided, *with all reasonable speed and expedition*; and that the said J. M. in return for the same, should pay to the said plaintiffs the amount of the said vessel and cargo, with such interest and commission as should appear to be due to them for the same either in money or goods: And the said defendants further say, that after the making of the said agreement, to wit, on, &c. at, &c. the said Betty made and executed the said writing-obligatory, with the said condition thereof, for the securing the performance of the said agreement on the part and behalf of the said J. M. and for no other use, intent, or purpose whatsoever: And the said defendants further say, that the said J. M. after the making of the said writing-obligatory, to wit, on, &c. being at the time of his death resident at James's Fort, Gambia River, Africa, and that the said plaintiffs, after the death of the said J. M. to wit, on, &c. did send the said vessel and cargo from England, under the command of R. L. as the captain and commander thereof, to James's Fort, Gambia River, Africa,

a plea, that the plaintiffs had sent the ship with all reasonable speed and expedition, the plaintiffs being ignorant thereof, and the ship arrived at the place where A. B. resided, and that the captain sold part of the goods, and brought the rest back to England, where they were sold, and the money arising from the sale was applied towards paying the plaintiffs what they had advanced, &c.

in order to be there delivered to the said J. M. the said plaintiffs, at the time of the sending of the said vessel and cargo, being ignorant of the death of the said J. M. to wit, at, &c. ; and that the said vessel and cargo afterwards, to wit, on, &c. arrived at, &c. and the said J. M. upon the arrival of the said ship being dead, the said R. L. sold and disposed of part of the cargo in Africa aforesaid, and brought the produce of such part of the said cargo as he so sold and disposed of, together with the vessel and the residue of the said cargo back to England, and there delivered the same to the said plaintiffs, who received, sold, and disposed of the same, and the money arising therefrom had and applied in part and towards satisfaction of the said sum of one thousand seven hundred pounds, with such interest and commission as should appear due to them : And the said defendants further say, that the said plaintiffs neglected and omitted to send out the said cargo from England aforesaid in the said voyage towards and for James's Fort with reasonable speed and expedition, whereby that part of the said cargo which was so sold and disposed of in Africa as aforesaid was obliged to be sold and disposed of, and was sold and disposed of to great loss, and the residue thereof could not be there sold and disposed of, but was obliged to be brought back to England with the said vessel, by reason and means whereof, and for no other cause whatsoever, a deficiency or loss was occasioned in the value of the said vessel or cargo equal to the residue of the said sum of one thousand seven hundred pounds in the said condition mentioned, with the said interest and commission due to the said plaintiffs in respect to the said vessel or cargo which remained unsatisfied at the time of the exhibiting the bill of the said plaintiffs, to wit, at, &c. ; and

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And Plea, that the plaintiffs sent the ship, and that the obligor executed the bond as a surety for the performance of the agreement on the part of the defendants.

And the said writing-obligatory being read and heard, the said defendants for further plea in this behalf, by like leave of, &c. *ad idem* ; because they say, that before the making the said writing-obligatory, to wit, on, &c. at, &c. it was agreed between the said plaintiffs of the one part, and the said J. M. in the said condition mentioned on the other part, that the said plaintiffs should procure for the use of the said J. M. a vessel and cargo of goods to the amount of about one thousand seven hundred pounds British money, and should send the same from England to the said J. M. at, &c. where the said J. M. then resided ; and the said J. M. in return for the same should pay, or cause to be paid to the said plaintiffs the amount of the said vessel and cargo, with such interest and commission as should appear to be due to them for the same either in money or goods : And the said defendants further say, that after the making of the said agreement, to wit, on, &c. at, &c. the said Betty made and executed the said writing-obligatory with the said condition thereof, for the securing the performance of the said agreement on the part and behalf of the said J. M. and for no other use, intent, or purpose whatsoever : And the said defendants further say, that the said J. M. after the making of the said writing-obligatory, to wit, on, &c. died, being at the time of his death resident at, &c. ; and that the said

said plaintiffs, after the death of the said J. M. to wit, on, &c. did send the said vessel and cargo from England under the command of one R. L. as the captain and commander, to James's Fort, &c. in order to be there delivered to the said J. M. the said plaintiff at the time of the sending of the said vessel and cargo, being ignorant of the death of the said J. M. to wit, at, &c.; and that the said vessel and cargo afterwards, to wit, on, &c. arrived at, &c.: And that the said J. M. upon the arrival of the said ship and cargo being dead, the said R. L. sold and disposed of part of the cargo in Africa aforesaid, and brought the produce of such part thereof as he sold and disposed of, together with the said vessel and the residue of the said cargo back to England, and there delivered the same to the said plaintiffs, who received, sold, and disposed of the same; and out of the monies arising therefrom, had and received the said sum of one thousand seven hundred pounds, with all such commission and interest as appeared to be due to them; and this, &c.; wherefore, &c.

G. WOOD.

And the said plaintiffs as to the said plea of the said defendants by them first above pleaded in bar, say *precludi non*; because they say, that the said plaintiffs did send the said vessel and cargo of goods to the said J. M. according to the form and effect of the said agreement in this plea mentioned, to wit, at, &c.; and this the said plaintiffs pray may be enquired of by the country, &c.; and the said defendants do the like, &c.: And the said plaintiffs, as to the said plea of the said defendants by them secondly above pleaded in bar, say, that they, by reason of any thing therein contained, *precludi non*; because they say, that the said plaintiffs did send out the said vessel and cargo in that plea mentioned from England on the said voyage towards and for James's Fort, &c. with reasonable speed and expedition, to wit, at, &c.; and this, &c.; wherefore, &c.: And the said plaintiffs, as to the said plea of the said defendants by them thirdly above pleaded in bar, say *precludi non*; because they say, that they the said plaintiffs did not, out of the money arising by the sale and disposal of the said ship and cargo in that plea mentioned, have and receive the sum of one thousand seven hundred pounds, with all such interest and commission as appeared due to them, as the said defendants have above in that plea alleged; and of this, &c.

Replication that the plaintiffs did send the ship &c. with all reasonable expedition; 3d Plea that they did not receive the money arising from the sale of the ship and goods &c.

Award of venue to the county palatine of Lancaster.

JORDAN AND ANOTHER } AGAINST
JOHNSTON. } AND the said Thomas and Leonard,
as to the said plea of the said George by
him above pleaded in bar, say, that they
by any thing therein contained ought not to be barred from having
and maintaining their aforesaid action against him; because they
say, that the said J. W. after the making of the said writing-obli-

and their clerk; balance due; clerk had not paid the balance,

gatory,

Replication to a plea of performance of covenants, according to the condition of bond; an account stated by the plaintiff but embezzled.

gatory, and after he entered and was received into the service of the said plaintiffs as their clerk or book-keeper, as in the said plea mentioned, and whilst he remained and continued in their house as clerk or book-keeper as mentioned in the said plea, to wit, on, &c. at, &c. as the clerk or book-keeper of the said plaintiffs received certain cash, to wit, the sum of one hundred pounds, of the customers of the said plaintiffs, for their use; and that afterwards, to wit, on, &c. at, &c. he the said J. W. did expend, lay out, and pay for the use of the said plaintiffs a large sum of money, to wit, the sum of, &c.; and that afterwards, to wit, on, &c. the aforesaid plaintiffs and J. W. accounted together of and concerning the money by him the said J. W. received in form aforesaid, and also of and concerning the money by him the said J. W. expended, laid out, and paid for the said plaintiffs in form aforesaid, and that upon the balance of such account so then stated and taken, there appeared to be due from the said J. W. to the said plaintiffs a large sum of money, to wit, the sum of pounds: And the said plaintiffs further say, that the said J. W. did not immediately on the stating of such account, or at any other time, pay, or in any manner account unto them the said plaintiffs, or to either of them for the said balance, to wit, for the said sum of pounds so due to and on balance as aforesaid, or any part thereof, nor hath he hitherto paid over, or in any manner accounted to them the said plaintiffs, or to either of them for the same or any part thereof, but on the contrary then and there, to wit, on, &c. embezzled and misapplied the said sum of, &c. contrary to the tenor and effect of the said writing-obligatory, and of the condition thereof; whereof the said A. S. and T. G. afterwards, to wit, on, &c. at, &c. had proofs, to wit, by the account aforesaid stated in the hand-writing of the said J. W. and due notice; and that the said A. S. and T. G. did not, nor did either of them within one month then next following, or at any other time, jointly or separately make good or pay, nor have they or either of them hitherto made good or paid to the said plaintiffs, or to either of them, the full value of the money, to wit, the said sum of pounds, which the said J. W. did so misapply or embezzle, but they so to do have, and each of them hath hitherto wholly refused, and still wholly refuse so to do, to wit, at, &c.; and this, &c.; wherefore, &c. and their debt aforesaid, together with their damages by them sustained on occasion of the detaining thereof, to be adjudged to him, &c.

Postea for plaintiff in debt on bond, conditioned for indemnifying against embezzlement of a clerk, or servant that he did embezzle the sum mentioned in the replication, and final judgment thereon.

Afterwards, that is to say, on the day and year, and at the place within contained, before the right honourable William Lord Mansfield, the chief justice within mentioned, John Way, gentleman, being associated unto the said chief justice by force of the statute in such case made and provided, come as well the within-named Thomas Jordan and Leonard Lefevre as the within-

named George Johnstone by their attornies within-mentioned, and the jurors of that jury, whereof mention is within made, being summoned, likewise come, who to say the truth of the within contents being chosen, tried, and sworn, say upon their oath that the within-named J. W. did embezzle and misapply the said sum of pounds within in that behalf mentioned, contrary to the tenor and effect of the within-mentioned writing-obligatory, and of the condition thereof, in manner and form as the within-named Thomas and Leonard have within by replying alledged; and they assent the damage of the within-named Thomas and Leonard, by occasion of the detaining of the debt within demanded, over and above their costs and charges by them about their suit in that behalf expended to one shilling, and to those costs and charges to forty shillings.

Therefore it is considered by the court here that the said Thomas and Leonard do recover against the said George their debt aforesaid, and the damages aforesaid by the said jury in form aforesaid assented, and also pounds for their costs and charges by the court of our lord the king now here adjudged to them and at their request by way of increase, which said damage in the whole amount to pounds, and the said George is in mercy, &c.

Michaelmas Term, 16. Geo. III.

AND the said sir Charles Hardy, &c. as to the said plea of the said Peter by him above pleaded in bar, say, that they by reason of any thing in that plea alledged ought not to be barred from having and maintaining their aforesaid action against the said Peter; because they say, that after the making of the said writing-obligatory in the said declaration mentioned, and the condition thereof, and of the said articles of agreement in the said condition, and in the plea aforesaid mentioned, and after the first day of, &c. in the said articles mentioned, and during the continuance of the year in the said articles in that behalf specified, that is to say, on, &c. the said Peter, as a contractor for supplying of meat for the use of the pensioners in the hospital in the articles mentioned, a large quantity of beef, to wit, one thousand pounds weight of good fat ox beef, having been, according to the tenor of the articles aforesaid, duly demanded by J. G. then steward of the said hospital, in the said articles mentioned of him as such contractor, under and by virtue of the said articles, for the use and purpose in the said articles mentioned, and delivered to the said J. G. then steward of the said hospital, in the said articles mentioned, for the use of the pensioners therein, to wit, at, &c. in the public kitchen in the said hospital a large quantity of beef, to wit, one thousand pounds weight of beef as and for good fat ox beef, the whole of the said fat ox beef not being good fat ox beef, but a great part thereof, to wit, two hundred pounds weight thereof, being beef of an infe-

(a) Replication (to a plea to a declaration of the penalty for breach of covenant contained in articles of agreement for supplying of good ox beef) by the governor of Greenwich Hospital against the contractor of meat, for sending in beef of an inferior quality than what was agreed for, whereby he forfeited ten pounds.

(a) This replicat on is not in its strict order. (See plea, replications, &c. to Debt on Articles of Agreement, post. and same head, Index, post. where it is to be found in its order.

rior quality and goodness, and of less value than good fat ox beef, to wit, two hundred pounds weight, part of the said four hundred pounds weight being bull beef, and two hundred pounds weight, residue of the said four hundred pounds weight, being bull stag beef, contrary to the tenor and effect of the said articles of agreement in the said plea mentioned, and of the covenant of the said Peter so by him made in that behalf as aforesaid; by means whereof, and according to the tenor of the said articles of agreement, and of the covenant of the said Peter in that behalf he became liable to pay for the said breach of covenant the sum of ten pounds unto the said plaintiffs, or to the then treasurer of the said hospital, but he to pay the same or any part thereof to the said plaintiffs, or either of them, or to the treasurer of the said hospital, hath hitherto wholly refused, and hath therein wholly failed and made default, contrary to the tenor and effect of the said articles, and of the covenant of the said Peter by him made in that behalf as aforesaid, to wit, at, &c.; and this, &c.; wherefore, &c.; and their debt aforesaid, together with their damages by them sustained on occasion of the detaining thereof, to be adjudged to them, &c.

J. MORGAN.

Trinity Term, 19. Geo III.

Declaration in
debt on bond at
the suit of the
knight marshal.

MIDDLESEX, to wit. Be it remembered that in Trinity term last past, before our lord the king at Westminster, came sir Sidney Meadows, knight, by W. M. W. his attorney, and brought into the said court of the said lord the king then there his bill against John Bean, being in, &c. of a plea of debt, and there are pledges for the prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit: Middlesex, to wit, sir Sidney Meadows, knight, complains against John Bean, being, &c. of a plea that he render to the said sir Sidney three hundred pounds of good, &c. which he owes to and unjustly detains from him; for that whereas the said John, on, &c. at, &c. by his certain writing-obligatory, sealed with the seal of the said John, and shewn to the court of our said lord the king now here, the date whereof is the day and year aforesaid, acknowledged himself to be held and firmly bound to the said sir Sidney, by the name and description of sir Sidney Meadows, marshal of the king's household, in the said three hundred pounds, to be paid to the said sir Sidney, whenever afterwards he the said John should be thereunto required: Yet the said John, although often requested by the said sir Sidney, hath not yet paid to the said sir Sidney the said sum of three hundred pounds, or any part thereof, but to pay the same to the said sir Sidney he the said John hath altogether refused, and still doth refuse to pay the same to the said sir Sidney; whereupon the said sir Sidney saith he is injured, and hath sustained damage to the value of three hundred pounds, and therefore he brings his suit, &c.

And

And now at this day, that is to say, on Friday next after the morrow of the Holy Trinity in the same term, until which day the said John had leave to imparle to the said bill and then to answer the same, as well the said sir Sidney, by his said attorney, as the said John, by C. H. his attorney, do come before our lord the king at Westminter, and the said John defends the wrong and injury, when, &c. and prays oyer of the said writing-obligatory aforesaid, and it is read to him; he also prays oyer of the condition of the said writing-obligatory, and it is read to him in these words, to wit: The condition, &c. [set forth the condition *verbatim*, which was, that one William Trott being admitted to be one of the bearers of the virges of the houshold, &c. he should behave honestly, &c.]; which being read and heard, the said John saith *actio non*; because he says, that the said William Trott and his followers, for the time being, and from time to time, and at all times after the making of the said writing-obligatory, during the continuance of the said William Trott in the said place or office, did well, faithfully, and honestly behave themselves in the same place or office in all things according to the duty of the same place or office, and therein the said William did well, faithfully, and honestly serve and execute all such writs, process, or warrants issued out of the said court as were delivered unto him to be executed by him, according to his utmost power, and did make a due and true return thereof, in all causes where a return thereof was required by law, and did upon every arrest by the said William made, take sufficient bail of able persons within the jurisdiction of the said court, where the party was by law bailable, for the appearance of the said party so arrested at the next court of the said palace of Westminter after such arrest made, and did truly return and deliver into the said court the said bail bond thereupon so taken at the next court-day after such arrest made as aforesaid, to wit, at, &c. and that the said William, after any arrest by him made by force or virtue of any writ, process, or execution, thung out of the said court, did not detain the party so arrested in his custody above the space of twenty-four hours from the time of such arrest made, but, as well in case of mesne process, where no sufficient bail could be given, as in case of execution, did presently after the twenty-four hours carry or convey the party so arrested to the prison of the said court according to law, and did not any way, directly or indirectly, give or cause to be given any notice to the party against whom such process or execution was awarded, whereby the arrest might be avoided or retarded, and did from time to time make a just account and due payment at the next court-day after the arrest made of all such fees as belonged to the said sir Sidney, and did from time to time do and execute all other things, writs, warrants, and process as were delivered to him, and which to his place or office belonged to be done and executed, and did not at any time after the making of the said writing-obligatory employ as his follower any person or persons which had been an officer of the said court, who had left or been put out of his said office

Plea to bond
(oyer of bond
and condition,
which was given
as a security for
one A. B. to the
knight marshal
for his behavior
honestly in the
office of one of
the bearers of
the virges of the
household), that
he performed
every thing
mentioned
the condition.

in

in the said court, nor did the said William at any time after the making the said writing-obligatory serve and execute any writ, process, or warrant, except the process of the said court, and did also save and keep harmless the said sir Sidney, and the steward, and all and every other judge and judges of the said court, and their and every of their heirs, executors, or administrators, of and from all matters and things by the said William done, omitted, committed, or suffered, for or by reason of not executing, or of not due executing any writ, process, or warrant to him delivered; and the said William did also from time to time save and keep harmless the said sir Sidney and the keeper of the said prison of the said court and his and their heirs, executors, and administrators, from all damages, loss, and danger which might happen or grow to him or them by reason of such not executing of any writ, process, or warrant as aforesaid: and also that the said William did from time to time, and at all times after the making of the said writing-obligatory, observe, perform, and obey all the lawful order and orders, rule and rules of the said sir Sidney, or any other judge or judges of the said court, touching and concerning himself or his duty and behaviour in his place aforesaid, and did the v and deliver a copy of the first clause mentioned and enacted in and by an act of parliament made in the second year of the reign of George the Second, entitled, “An Act for the Relief of Debtors with respect to the Imprisonment of their persons,” to every person whom he arrested or took into his custody by virtue of any writ, process, or warrant, and carried or came to be carried to some public or other house, and permitted him or her, or any friend of theirs, to read the same before any liquor or meat was there called for; and also did well, faithfully, and honestly observe, perform, and execute the several directions prescribed in the said act of parliament, and all other matters and things, which according to his duty or office he ought to have observed, performed, and executed, without any fraud, oppression, or wrong to any person or persons whatsoever, according to the form and effect of the condition of the said writing-obligatory, to wit, at, &c.; and this, &c.; wherefore, &c. if, &c.

Drawn by MR. WARREN.

Replication. And the said sir Sidney, as to the said plea of the said John by pretending that him above pleaded in bar, says, that he the said sir Sidney by reason of any thing by the said John in that plea above alleged, ought not to be barred from having and maintaining his action aforesaid against him; because pretending that the plea aforesaid and the matters therein contained, are not sufficient in law to bar the said sir Sidney from having his aforesaid action thereof maintained against the said John; protesting also that the said William Trott, in the said condition of the said writing-obligatory mentioned hath not in any thing performed and kept the said condition; for replication in this behalf he the said sir Sidney says, that the said W.T. *is a copyist and* *justiciarius* *ad* *justiciarium* *induct.*

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in the said condition of the said writing-obligatory mentioned, did not from time to time, and at all times after the making of the aforesaid writing-obligatory, during the continuance of the said W. T. in the said place or office, to wit, the place or office in the said condition mentioned, observe, perform, and obey all the lawful orders, rule and rules of the said sir Sidney, or any other judge or judges of the said court in the said condition mentioned, touching and concerning himself the said W. T. or his duty and behaviour in his place aforesaid, for that after the making the said writing-obligatory and the condition thereof, and whilst the said W. T. continued in his said office, and before the exhibiting the bill of the said sir Sidney, against the said John, to wit, in the court of the king's palace of Westminster, holden at Southwark, in the county of Surry, within the jurisdiction of the said court, to wit, on, &c. in the seventeenth year of the reign of, &c. before William earl Talbot, steward of the king's household, the said sir Sidney, then and still knight marshal of the said household, and Sevet Blackburn, esquire, steward of the said court, judges of the court aforesaid, by virtue of the letters patent of Charles the Second, late king of England, and bearing date at Westminster, the fourth day of October, in the sixteenth year of his reign, Ann Read impleaded William Shearman in a certain plea, to wit, in a plea of trespass on the case, to the damage of the said Ann of fifty pounds, of and for the not performing certain promises and undertakings then lately made by the said W. S. to the said Ann within the jurisdiction of the said court, and such proceedings were afterwards had in the said court of our said lord the king of his palace of Westminster in that plea, that afterwards, to wit, at the court of our said lord the king of his palace of Westminster aforesaid, holden at S. within the county and jurisdiction aforesaid, before the said judges of the said court, on, &c. it was considered by the said court that the said Ann should take nothing by her said complaint, but that for her false claim therein she should be in mercy, &c. and that the said W. S. should go thereupon without a day, &c.; it was also commanded by the said court, that the said William did recover against the said Ann sixty-five shillings for his costs and charges by him about his suit in the said plea sustained, and which were to the said W. S. at his request adjudged by the same court, according to the form of the statute in that case lately made and provided, and that the said W. S. should have his execution thereupon, as by the record and proceedings thereof remaining in the said court of our said lord the king of his palace of Westminster, at S. aforesaid, in, &c. reference being thereto had may more fully and at large appear, which said judgement remaining in its full force, strength, and effect, not in the least reversed, set aside, paid off, or satisfied, the said sum of sixty-five shillings in form aforesaid recovered, not being, or any part thereof being paid or satisfied to the said W. S. afterwards, whilst the said W. T. continued in his office as aforesaid, to wit, at the court of our said lord the king of his palace of Westminster, holden at Southwark,

A. R. in
W. S. in
court,

non-suited,

costs
to W. S.

DEBT ON INDEMNITY

within the court and jurisdiction aforesaid, before the said judges of the said court, on, &c. a certain writ of our said lord the king called a *capias ad satisfaciendum* of and upon the said judgment issued out of that court against the said Ann, at the prayer of the said W. S. directed to the bearers of the virges of his majesty's household, the officers and ministers of the said court of the king's palace of Westminster, and every of them, by which said writ our said lord the king commanded them, and every of them, that they or one of them should take the said Ann, if she should be found within the jurisdiction of that court, and her safely keep, so that they or one of them might have her body before the judges of the said court, at the next court of his palace of Westminster, on &c. then next following, to be holden at S. aforesaid, in the county aforesaid, to satisfy the said W. S. the said sixty-five shillings by him in form aforesaid recovered, whereof the said Ann was convicted, and that they or one of them should have there then that writ, which said writ afterwards, and before the return thereof, to wit, on, &c. at, &c. in, &c. was delivered to James Banter, he the said James Banter then, until, at, and after the return of the said writ, being one of the bearers of the virges of the household of our said lord the king, and an officer and minister of the court aforesaid, to be by him executed in due form of law, by virtue of which said writ he the said J. B. so being one of, &c. afterwards and before the time appointed by the said writ for the return thereof, to wit, on, &c. at, &c. in, &c. took and arrested the said Ann by her body, and then and there had her in his custody by virtue of the said writ at the suit of the said W. S.: And the said sir Sidney further says; that the said Ann so being in the custody of the said J. B. under and by virtue of the said writ, at the suit of the said W. S. as aforesaid, he the said J. B. afterwards, and whilst she was so in custody, and before the return of the said writ, and before the exhibiting of the bill of the said sir Sidney, to wit, on, &c. at, &c. in, &c. delivered the said Ann in execution at the suit of the said W. S. as aforesaid, unto the custody of the said William Trott at his request, he the said W. T. at the time of the issuing the writ aforesaid, and from thence until such delivery to him of the said Ann and from thence for a long time afterwards being one of the bearers, of, &c. to be by him safely kept in custody until the time appointed by the said writ for the return thereof for the purpose in the said writ specified, and the said William Trott then and there had and took the said Ann into his custody in execution at the suit of the said W. S. for the purpose aforesaid: And the said sir Sidney further says, that afterwards and before the return of the said writ, to wit, on, &c. the said William Trott so being such officer as aforesaid, without the leave or licence of the said W. S. or of the said James Banter, and against the will of the said W. S. and of the said J. B. voluntarily permitted and suffered the said Ann to escape and go at large out of the custody of him the said W. T. the judgment aforesaid being then unsatisfied; and although the said court of our lord the king of his palace of Westminster aforesaid, in the said writ

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mentioned to be holden on, &c. next after the issuing of the said writ, was afterwards, to wit, on, &c. at, &c. in, &c. holden before the aforesaid judges of the said court; yet the said W. T. then and there afterwards being one of the bearers of, &c. had not then and there at the said court so holden as aforesaid, the body of the said And. in the said writ named, before the said judges of that court to answer as last aforesaid for the purpose in the said writ inclosed, as by the said writ was commanded and required, but therein wholly failed and made default, to wit, at, &c. And the said Sir Sumner further says, that the said W. S. being unsatisfied the said aforesaid shillings by him in form aforesaid recovered, and every part thereof afterwards, to wit, at the court of our lord the king of his palace of Westminster, holden at, &c. in, &c. before the said William Earl, &c. judges of the said court, on, &c. complained against the said J. B. (he the said J. B. then being, &c.) for a misbehaviour and breach of duty in his said office; to wit, in the execution of the writ aforesaid, which had been delivered to him to the said W. S. to be executed by him in manner and for the purpose aforesaid, that is to say, by having taken the said And. in execution, and not making a proper return of the writ aforesaid, whereupon by a rule of the said court then and there duly made in the aforesaid court it was ordered that the said J. B. he the said one, &c. upon notice of the said rule, should attend at the then next court, to answer such matters as should then be objected against him on behalf of the said W. S. of which said rule so then and there made as aforesaid, he the said J. B. then and there at the said court had notice; whereupon the said J. B. then and there at the said court made complaint against the said W. T. then and there one, &c. for a misbehaviour and a breach of duty in his said office, to wit, in so voluntarily suffering and permitting the said And. to escape and go at large from the custody of him the said W. T. to wit, without the licence of the said W. S. or of the said J. B. whereupon by another rule of the said court then and there duly made in that suit on the behalf of the said J. B. it was ordered as follows, to wit, that the said W. T. he the said W. T. then one, &c. upon notice of the said rule, should attend at the then next court to answer such matters, &c. of which said rule so then and there made as last aforesaid, the said W. T. afterwards, and before the next court of, &c. held after the making of the said rule last aforesaid, to wit, on, &c. had notice. And the said Sir Sumner further says, that such further proceedings were afterwards had in the said court of, &c. in, &c. on, &c. before the said judges of the said court on hearing the said complaint of the said W. S. against the said J. B. it was by another rule of the said court, then and there duly made in and by the said court in the said suit, ordered that the said J. B. the said J. B. then one, &c. should pay to the said W. S. sixty-five shillings, and the costs of that complaint before that day month, which costs amounted to a large sum, to wit, the sum of nine shillings, of which said last mentioned rule, and of the premises aforesaid, the said J. B. then

and there had notice: And the said sir Sidney further says, that immediately after the making of the said rule, the said court then and there on hearing the said complaint of the said J. B. against the said W. T. he then being one, &c. by another rule then and there duly made in and by the same court in the said suit, ordered that the said W. T. should indemnify the said J. B. as to the rule made in that cause, to wit, the said rule against the said J. B. whereby he was ordered to pay to the said W. S. the said sixty-five shillings, and the costs of that complaint, before that day month, of which said last-mentioned rule, and of the premises aforesaid, the said W. T. afterwards, to wit, on, &c. at, &c. had notice: And the said sir Sidney further says, that the costs of that complaint of the said W. S. by him made against the said J. B. as aforesaid, then and there amounted to a large sum of money, to wit, the, &c. whereof the said W. T. afterwards, to wit, on, &c. at, &c. had notice: And the said sir Sidney further says, that the said W. T. did not indemnify the said J. B. as to the second rule above-mentioned, made in the suit against the said J. B. in any manner whatsoever, whereupon the said J. B. afterwards, to wit, on, &c. at, &c. was forced and obliged to pay, and did then and there pay and caused to be paid to the said W. S. the said sixty five shillings, and the said costs of the complaint made against him, amounting to a large sum of money, to wit, the sum, &c. whereby the said James Banter became damnified through the neglect and default of the said W. T. nor hath the said W. T. at any time since hitherto in any manner indemnified the said J. B. in the premises: And so the said sir Sidney saith, that the said W. T. did not in any manner perform, fulfil, or keep the said rule or order secondly mentioned to have been made upon him in the duty of his office in the plea of the plaint aforesaid, but therein wholly failed and made default, contrary to the tenor and effect of the condition of the said writing-obligatory, to wit, at, &c.; and this, &c. wherefore he prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detention thereof to be adjudged to him, &c.

J. MORGAN.

Demurrer.

And the said John says, that the said plea of the said sir Sidney, by him above pleaded in reply to the said plea of the said John, above by him the said John pleaded in bar, and the matters therein contained, are not sufficient in law for him the said sir Sidney to have his aforesaid action thereof maintained against the said John; and to which said plea in manner and form as the same is above pleaded and set forth, he the said John is not under any necessity, or in anywise bound by the law of this realm to answer; and this, &c. wherefore for want of a sufficient replication in this behalf, the said John prays judgment if the said sir Sidney ought to have or maintain his aforesaid action thereof against him, &c.; and for causes of demurrer in law in this behalf, he the said John, according to the form of, &c. shews to the court here the following causes,

causes, that is to say, for that it is not alledged in or by the said replication, that the delivery of the said Ann Reed, in execution at the suit of the said William Shearman, into the custody of the said William Trott, for the purposes in the said replication mentioned, was done at the request of the said Ann, or by her desire or consent, or by the licence, consent, or direction of the said W. S. and therefore the said delivery of the said Ann Reed by the said James into the custody of the said William Trott, was an escape of the said Ann out of the custody of the said J. B. voluntarily suffered and permitted by the said J. B.; and the said W. T. could not in such case have any right, power, or authority to keep or detain the said Ann in his custody, by virtue of the said arrest so made on her body by the said James Banter, by virtue of the said writ of *capias ad satisfaciendum*, mentioned in the said replication of the said sir Sidney; and for that it does not appear by the said replication, where, or at any, and what place the said J. B. above supposed or alledged to have permitted the said Ann to escape and go at large out of his custody; and for that it is not alledged in and by the said replication, that the delivery of the said Ann by the said James to the said William was within the space of twenty-four hours from the time of the said arrest by the said James; and for that it doth not appear, or is it alledged or averred in or by the said replication, that the said rule thereby alledged to have been made against the said William Trott, at the said court so holden on the said twenty-first day of, &c. was a lawful rule or order, nor such as can any way affect the said John as a security for the said W. F. by virtue of the said writing-obligatory, neither does it appear by the said replication that the said costs in the said replication mentioned were ever taxed or allowed by the said palace court, or any other court, or is it alledged or averred in or by the said replication, that the said sixty-five shillings, and the said costs, or either of them, were or was ever demanded by the said W. S. of the said J. B. and W. T. or either of them, or that the said William Trott ever had any notice given him of that rule, whereby he was so ordered to indemnify the said J. B. nor does it appear, or is it alledged by the said replication that the said sixty-five shillings, and the above supposed costs of nine shillings were, or that either of them, or any part of them, or either of them were or was ever demanded by the said W. S. of the said J. B. or that the same was ever demanded by the said W. T. either by the said W. S. or by the said J. B. or that the said W. T. ever had notice of the payment of the said money by the said J. B. to the said W. S. and for that the said replication is in many respects insufficient, uncertain, and wants form, &c.

W. BALDWIN.

And the said sir Sidney says, that the said plea of the said sir Sidney by him above pleaded in reply to the said plea of the said John, above by him the said John pleaded in bar, and the matter therein contained, are sufficient in law for him the said sir Sidney

Joinder in de murr.

Sidney

Sidney to have his aforesaid action thereof maintained against the said John, which said plea so pleaded in reply, in manner and form as the same is above pleaded and set forth, he the said sir Sidney is ready to verify and prove as the court shall award; and because the said John hath not answered the said plea so pleaded in reply, nor in any manner denied the same, he the said sir Sidney as before prays judgment and his debt aforesaid, together with his damages by him sustained on occasion of the detention thereof to be adjudged to him, &c. : And because the court of our lord the king now here is not yet advised what judgment to give of and upon the premises, a day is therefore given to the said parties to come before our lord the king at Westminster, on next alter to hear judgment of and upon the premises, for that the court of our lord the king is not yet advised thereof, &c.

J. MORGAN.

END OF VOLUME THE FIFTH.

ERRATA AND ADDENDA.

Page 29, margin, dele *tenders and, &c.* and read *Replication to 1st Issue, and Tenders, &c.*

Page 53, for *Lessee* read *Lessee*.

Page 149, top line, for *assignment* read *assignment*.

Page 201, seventh line from the top, dele *quod vide*.

Page 207, top line, for *Company* read *Company*.

Page 233, top line, for *him* read *time*.

Page 277, note, for *invalid* read *unfulfilled agreements*.

Page 283, margin, for *plea tender that* read *of tender and that*.

Page 288, margin, read *Demurrer to the rejoinder for departure in pleading*.

Page 353, and 355, top line, for *residence* read *reference*.

Page 417 and 418, top line, addendum *plea* by heir.

